

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)	FINDINGS OF FACT,
Junction City School District 69)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 24-054-043

I. BACKGROUND

On August 5, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Junction City School District (District). The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of the Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parents and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On August 15, 2024, the Department’s Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of August 29, 2024.

The District submitted a *Response* on August 29, 2024, denying the allegations, providing an explanation, and submitting documents in support of the District’s position. The District submitted the following relevant items:

1. District’s Written *Response* to Complaint, 8/29/24
2. Letter from Student’s previous teacher to District, 10/19/23
3. Draft IEP, 9/6/23
4. Special Education Placement Determination, 9/6/23
5. Notice of Team Meeting, 8/30/23
6. Prior Written Notice (PWN), 10/9/23
7. Handwritten Notes, 10/6/23
8. Handwritten Notes, 10/12/23
9. Consent for Evaluation, 10/26/23

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

10. IEP, 10/31/23
11. Special Education Placement Determination, 11/1/23
12. Notice of Team Meeting, 10/27/23
13. PWN, 10/30/23
14. Meeting Minutes, 11/1/23
15. Notice of Team Meeting, 10/27/23
16. IEP Meeting Agenda, 11/1/23
17. IEP Amendment, 11/21/23
18. Special Education Placement Determination, 11/21/23
19. Notice of Team Meeting, 11/20/23
20. PWN, 11/21/23
21. Agenda, 11/21/23
22. Meeting Minutes, 11/21/23
23. Meeting Minutes, 11/29/23
24. Evaluation Planning Meeting Agenda, 11/29/23
25. Notice of Team Meeting, 11/16/23
26. Consent for Evaluation, 1/26/24
27. IEP Amendment, 1/29/24
28. Special Education Placement Determination, 1/29/24
29. Notice of Team Meeting, 1/5/24
30. PWN, 1/29/24
31. Meeting Minutes, 1/29/24
32. Functional Behavior Assessment Report, 2/8/24
33. Handwritten Notes, 2/27/24
34. Speech/Language Evaluation Report, 4/15/24
35. School Based Occupational Therapy Evaluation, 4/2/24
36. Psychological Evaluation, 4/15/24
37. School-Based Physical Therapy Evaluation, 4/15/24
38. Agenda, 4/15/24
39. Notice of Team Meeting, 3/12/24
40. Notice of Team Meeting, 3/8/24
41. Meeting Minutes, 4/23/24
42. IEP Amendment, 5/2/24
43. Special Education Placement Determination, 5/2/24
44. PWN, 5/2/24
45. Meeting Minutes, 5/2/24
46. PWN, 5/17/24
47. TAG Meeting Minutes, 5/17/24
48. Meeting Minutes, 5/20/24
49. Notice of Revocation of Consent, 10/26/23
50. Abbreviated School Day Notice, 11/1/23
51. Response to Notice of Revocation of Consent, 11/2/23
52. Letter re Senate Bill 819, 12/1/23
53. Progress Report, 3/22/24
54. Progress Report Template, undated

55. Report Card, Term 1, 2023-24 School Year
56. Report Card, Term 2, 2023-24 School Year
57. Report Card, Term 3, 2023-24 School Year
58. Progress Report, 6/14/24
59. Permission to Obtain and Release Information, 4/18/24
60. Consent for Evaluation, 4/19/24
61. School Calendar, 2023-24 school year
62. Chat Messages between District and Parent, 11/3/23-5/10/24
63. Emails between District and Parent, 2023-24 school year
64. Recording of Meeting, 11/21/23
65. Recording of Meeting, 11/29/23
66. Recording of Meeting, 1/29/24
67. Recording of Meeting, 4/15/24
68. Recording of Meeting, 4/23/24
69. Recording of Meeting, 5/2/24
70. Recording of Meeting, 5/20/24

The Parent submitted a *Reply* to the District's *Response* on September 6, 2024 along with the following additional documents that were not provided by the District:

1. Emails between District and Parent, 2023-24 school year
2. DIBELS Maze, 3/27/24
3. DIBELS Maze, 8/22/24
4. Eligibility Statements, 6/14/22
5. Psychoeducational Evaluation, 6/13/22
6. Occupational Therapy Evaluation, 8/27/24
7. Communication Evaluation, 3/27/24
8. Plan of Care, 3/2/24
9. Request for Independent Educational Evaluation, undated
10. Point Cards, 2023-24 school year
11. Progress Report, 11/30/23
12. IEP, 9/21/22
13. IEP Parental Concerns, 11/1/23
14. Present Levels Parent as Teacher, 11/1/23
15. IEP Goals Idea Bank, 11/1/23
16. Accommodations Brainstorm, 11/1/23
17. Accommodations Ideas, 11/1/23
18. IEP Organization and Historical Chronology, undated
19. IEP Over Time, undated
20. OSEP Letter, 6/4/03
21. SLP Telehealth FAQ, January 2023
22. IEPs, 2020-2023
23. Meeting Transcript, 4/23/24
24. Meeting Transcript, 4/15/24
25. Meeting Transcript, 5/2/24

26. Meeting Transcript, 5/20/24

On September 16, 20, and 27, 2024 the Complaint Investigator interviewed District personnel. The Complaint Investigator interviewed the Parent on September 20, 2024. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent’s allegations and the Department’s conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from August 6, 2023 to the filing of the Complaint on August 5, 2024.

Allegations	Conclusions
<p>Evaluation and Reevaluation Procedures</p> <p>The Complaint alleged that the District violated the IDEA by, a) failing to timely convene an evaluation planning meeting to determine if the Student required evaluations in additional areas of suspected disability, b) failing to assess the Student in all areas of suspected disability, and c) failing to timely complete an agreed-upon special education evaluation of the Student and review the results at an IEP meeting.</p> <p>(OAR 581-015-2110; 34 CFR §§ 300.303 and 300.304)</p>	<p>Substantiated in Part</p> <p>The District did not complete the FBA and review it at an IEP meeting within sixty (60) school days of receiving consent for the evaluation.</p> <p>The District unreasonably delayed providing the Parent with a consent to evaluate following the November 29, 2023 Evaluation Planning Meeting.</p>
<p>Content of IEP</p> <p>The Complaint alleges that the District violated the IDEA when it failed to include information in the Student’s IEP that is necessary to address the Student’s unique educational needs, including, a) accurate and current present levels of performance, b) sufficient information regarding the impact of the Student’s disability on their education, c) goals that are specific, measurable, and include baseline data, d) accommodations necessary for the Student to access their education, and e) appropriate</p>	<p>Substantiated in Part</p> <p>The District failed to adequately describe the Occupational Therapy services in the Student’s IEP. The Student’s Social Skills goal was also not measurable.</p>

Allegations	Conclusions
<p>related services including direct occupational therapy and physical therapy.</p> <p>(OAR 581-015-2200; 34 CFR § 300.320)</p>	
<p>When IEPs Must Be in Effect</p> <p>The Complaint alleged that the District violated the IDEA by not providing special education and related services, specifically occupational therapy services and specially designed instruction in math, not implementing accommodations in accordance with the Student’s IEP, and failing to provide the Parent with progress reports that adequately explained the Student’s progress toward their annual IEP goals.</p> <p>(OAR 581-015-2220; 34 CFR § 300.323)</p>	<p>Not Substantiated</p> <p>The District implemented the IEP as written.</p>
<p>Review and Revision of IEPs</p> <p>The Complaint alleged that the District violated the IDEA by not reviewing and revising the Student’s IEP, as appropriate, to address current assessment results and other new information related to the Student’s disability.</p> <p>(OAR 581-015-2225; 34 CFR § 300.324)</p>	<p>Not Substantiated</p> <p>The IEP Team met numerous times and reviewed and revised the IEP as appropriate.</p>
<p>Education Records</p> <p>The Complaint alleged that the District violated the IDEA by denying the Parent’s access to the Student’s education records, specifically services logs or other records demonstrating when special education services were provided to the Student.</p> <p>(OAR 581-015-2300; 34 CFR § 300.501(a))</p>	<p>Not Substantiated</p> <p>The District provided access to all education records in its possession. The District does not keep service logs.</p>
<p>Prior Written Notice</p> <p>The Complaint alleged that the District violated the IDEA by not providing accurate PWN to the Parent regarding the outcome of IEP meetings and not providing PWN prior to amending the Student’s IEP goals.</p>	<p>Substantiated in Part</p> <p>The District failed to clearly describe the Occupational Therapy services offered to the Student.</p>

Allegations	Conclusions
(OAR 581-015-2310(2)(a); 34 CFR § 300.503)	
<p>Parent Participation</p> <p>The Complaint alleged that the District violated the IDEA by interfering with the Parent’s ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student. Specifically, the District predetermined decisions regarding the content of the Student’s IEP, did not consider information about the Student provided by the Parent, failed to allow the Parent to audio-record IEP meetings, did not allow the Parent to communicate with staff responsible for implementing the Student’s IEP, and failed to provide notices to the Parent using the Parent’s preferred mode of communication.</p> <p>(OAR 581-015-2190; 34 CFR § 300.501)</p>	<p>Substantiated in Part</p> <p>The District impeded the Parent’s ability to participate in decisions regarding the Student’s Occupational Therapy services.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>Due to the alleged IDEA violations detailed above, the Complaint alleges that the District failed to provide the Student with a free appropriate public education.</p> <p>(OAR 581-015-2040; 34 CFR § 300.101)</p>	<p>Substantiated in Part</p> <p>The District denied the Student a FAPE when it unreasonably delayed providing the Parent with a consent to evaluate following the November 29, 2023 Evaluation Planning Meeting and when it failed to adequately describe the Occupational Therapy services that were offered to the Student.</p>

REQUESTED CORRECTIVE ACTIONS

The Complainant requests that the Department order the District to take the following corrective action:

1. (1) Evaluate [the Student] immediately on an expedited schedule, even if the evaluation must be conducted during the summer, for any assistive technology that may assist [the

Student] in the educational environment; (2) Require training for district personnel on testing procedures and timelines and that delays in signing consent forms to prolong testing timelines is inappropriate; (3) Require monitoring of the district on evaluation timelines from the time an evaluation is requested in writing, to the time the consent is signed, to when the evaluation is complete and decisions on the educational impact is made.

2. (1) Instruct the District to call an IEP Meeting to edit and revise the Present Levels to appropriately represent [the Student]; (2) Require district and school staff training on how to write a robust Present Levels section; (3) Provide oversight and review of IEPs from the district to ensure that Present Levels are written correctly.
3. (1) Instruct the district to revise the remaining sections that are not appropriate and update the IEP to correctly address [the Student's] unique needs; (2) Require training to staff on how to write Disability Impact Statements and Statements of Need; (3) Provide oversight at the state level including review and audit of Disability Impact Statements and any additional steps necessary.
4. (1) Instruct the district to write new goals that have data and agreement on the team to establish their need, provide appropriate baselines in the Present Levels, and include the impact on the education to the general education curriculum; (2) Require staff training on writing goals, especially concentrating on the connection between the Present Levels section and the goals; (3) Provide state oversight including additional training to ensure that the district is writing appropriate goals.
5. (1) Instruct the district to reconvene an IEP meeting and collaboratively agree to new goals or revise existing goals that meet the state and federal requirements; (2) Require training of district staff for writing goals, specially focusing on the specificity and progress tracking; (3) Provide oversight at the state level, additional training, and audits as needed to ensure the district is writing goals in a way that ensure a student is making progress according to their unique needs.
6. (1) Instruct the district to convene an IEP meeting to collaboratively rewrite the goals focused on self-advocacy with a clear baseline and goal; (2) Require district staff to be trained in writing goals on self-advocacy skills, data collection, and how to report on goals; (3) Instruct the district to provide the parent with progress updates on this goal that include the absent teacher observation; (4) Provide state oversight including additional training and audits to ensure that social skills goals are correctly written and reported on.
7. (1) Require the district to train staff on how to write progress reports; (2) After staff has been trained, require the district staff to update parents on progress for existing goals; (3) Provide state monitoring of the district's progress reports to ensure that they meet the state and federal requirements.
8. (1) Require district staff to get training on how to write Prior Written Notices and when they must be written; (2) Direct the district to amend the IEP and include direct Occupational Therapy minutes on the IEP or to provide documentation on why there should have been a change between direct service and consultative minutes based on the needs of the student and not the district; (3) Provide oversight of IEPs by the state to ensure services are written correctly, especially when students transfer from another district; (4) In lieu of compensatory services, direct the district to call an IEP meeting to

- agree on Occupational Therapy goals and start those services without delay.
9. (1) Instruct the district to call an IEP meeting and discuss how these disabilities keep [the Student] from gaining benefit from the general education curriculum and how the school can provide [the Student] with equal access to [their] education in the least restrictive environment; (2) Require district staff to get training on the importance of the parent's perspective and involvement in the IEP process; (3) Provide state oversight on the district's IEP evaluation and IEP amendment process to ensure evaluations are given due weight in the process.
 10. (1) Require district staff to be trained on sharing information with parents and involving them in the IEP process; (2) Require district staff training on maintaining fidelity to the IEP; (3) Require district staff training on writing IEP goals and progress notes as well as how to properly make changes; (4) Direct the district to convene an IEP to correct the IEP goal to what it was previously; (5) Direct the district to provide proof of compliance of a Special Educator directly overseeing [the Student's] SDI minutes; (6) Provide the district with oversight and audits to ensure that SDI minutes are being provided following the IEP.
 11. (1) Instruct the district to amend the IEP to include that [the Student] does not need to ask for [their] accommodations and that [their] AT device should be provided at the same time as other students' writing implements; (2) Require training for school staff in how to implement accommodations for students that have a disability in communication.
 12. (1) Require district staff to receive training in following the accommodations on the IEP; (2) Require district staff to receive training on how to work with students that only use technology; (3) Instruct the district to perform the Assistive Technology assessment that was first requested October 26, 2023; (4) Require district staff receive training on effective parent involvement in the IEP development.
 13. (1) Instruct the district to call an IEP meeting and add visual accommodations the team can see [the Student] needs; (2) Instruct the district to call an IEP meeting to discuss and adjust the IEP to account for the area of need [the Student] has shown in vision; (3) Require the district staff get training on adding accommodations in a known area of need before a medical diagnosis is provided when there is evidence that the student requires accommodations in those areas.
 14. (1) Instruct the district to call an IEP meeting to add goals and service minutes appropriate to [the Student] and based on data available, including outside evaluations; (2) Require the district staff to be trained on changing services; (3) Require the district staff to be trained on how to provide related services, including writing goals.
 15. (1) Require the district staff to receive training on writing Prior Written Notices; (2) Provide state oversight and review for the PWNs to ensure there are no longer Parental Safeguard violations.
 16. (1) Instruct the district to provide the parents with progress information for the 5th grade year on all subjects and IEP goals; (2) Instruct the district to convene an IEP meeting to make changes to the IEP based on progress or lack of progress, over the 5th grade year; (3) Require district employees receive training on how to write progress notes; (4) Require district employees receive training on how to provide progress that allows parents to be participants in the IEP process as provided in IDEA and the Parental

Safeguards.

17. (1) Instruct the school to provide all documents to [the Parent] in an electronic format, either by PDF to my email or another method that documents are consistently retrievable from without time limit and where my access to this method is free; (2) Require the district staff receive training on how to accommodate parents with disabilities; (3) Provide state oversight how the district provides documents to parents and ensure they are in the proper format or language for the parents.
18. (1) Require district staff to receive training on how to include parents as members of the IEP team; (2) Instruct the district to allow [the Parent] the same access for meetings as the school-based team members; (3) Provide state oversight and additional training, as needed, to ensure this does not continue to happen with other families.
19. (1) Instruct the district to provide service records or any information that they have to show when services were rendered or whether services were rendered; (2) Require the district to keep service logs or otherwise provide parents with information on when services are rendered or whether their child is due compensatory services; (3) Provide state oversight on whether the district is providing all services in conformity of the IEP; (4) Require the district staff to receive training on how to ensure parents are an equal part of the IEP team.
20. (1) Require the district staff to receive training on parental involvement in the IEP; (2) Instruct the district to ensure equal weight is given to parental input; (3) Provide state oversight of the district to ensure parental involvement is encouraged and considered in the creation of IEPs.
21. (1) Require district staff to train on the requirements of allowing parents and EAs to communicate and the requirement of EAs to be allowed to participate in IEPs; (2) Instruct the district to invite EAs to future IEP meetings and find substitutes as needed for the EAs that wish to attend [the Student's] IEP meetings; (3) Provide state oversight to ensure the district is following all laws, rules, and regulations regarding EAs.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigations to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before August 6, 2023. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student's disability and special education history.

1. The Student is eleven years old and is in sixth grade. The Student is currently enrolled in a charter school in another school district (Charter School).
2. The Student was found eligible for special education by the District in kindergarten and is currently eligible under the categories of Autism Spectrum Disorder (ASD) and Other Health Impairment (OHI).

3. At the start of the 2023-24 school year, the Student was enrolled in the Charter School. As described by the Parent, the Charter School is based on a “home education model led by the parents with support from certified teachers, school-provided resources, and a stipend for educational materials.” “Parents were responsible for finding and implementing the curriculum, providing the school with daily check-ins for attendance, implementing District testing, and turning in Portfolio work to show progress in the chosen curriculum. The only education delivered virtually were IEP services such as OT, speech, and special [sic] designed instruction.”
4. The last annual IEP developed by the Student’s previous school district is dated September 21, 2022 (September 2022 IEP). The September 2022 IEP includes, among other things:
 - a. Special Factors: The Student exhibits behavior that impedes their learning or the learning of others and has communication needs. No other special factors are identified for further consideration by the IEP team.
 - b. Input from Parents: The Parent “would like to make sure things are well documented for all settings.” The Parent was initially concerned that the OT provider had not been at the last three IEP meetings, but notes that the OT did attend one of the meetings to update the IEP and the OT goals had been revised. The Student’s “reading comprehension has improved greatly,” and the Student “has begun to really enjoy reading!” The Parent expressed the importance of the Student having the option to use technology and that they need “to always have the option to not use writing as [their] information output.” The Parent also expressed a desire for the Student to be “in person” and “have the option and ability to access other students.”
 - c. Present Levels of Academic Achievement:
 - i. Reading: The Student scored in the 98th percentile in reading on Measures of Academic Progress (MAP) testing completed in Spring 2022 with accommodations. They do well when reading along with audiobooks so they can see and hear the text. The Student “does well identifying concrete information from [their] reading but needs support and guidance with inferential information.”
 - ii. Math: The Student scored in the 99th percentile in math on MAP testing completed in Spring 2022 with accommodations. Math is an academic strength and the Student “finds it easy to move through the curriculum.”
 - iii. Writing: The Student scored in the 57th percentile in “Language Usage” on MAP testing completed in Spring 2022 with accommodations. The Student “struggles with communicat[ing] information with writing,” and “does better giving answers verbally.” They are “able to put sentences together when speaking, but [are not] able to put them together in writing.”
 - iv. Science: The Student scored in the 99th percentile in science on MAP testing completed in Spring 2022 with accommodations.

d. Present Levels of Functional Performance:

- i. Communication: The Student “identified open mind and closed minded behaviors with over 80% accuracy in 2 of 3 sessions,” “explained how to respond with an open mind with over 80% accuracy in 2 of 4 sessions,” and “role played how to respond with an open mind with over 80% accuracy in 3 of 3 sessions.” The Student “explained how to start a conversation and role played starting a conversation with 60% accuracy,” “identified how to join an ongoing conversation with 100% accuracy,” and “explained how [to] join an ongoing conversation with over 80% accuracy in 1 of 2 sessions.” It is noted that the Student “would benefit from continuing this goal.”

The Student “identified the meaning of idioms presented in text passages with 80% or greater accuracy in 7 of 13 sessions,” and “continues to require support with this skill.”

- ii. The Student “is very likely to have celiac disease,” and they are “diagnosed with ADHD, ASD, Dyspraxia, and Hypermobility.”
- iii. The Student “struggles with anxiety in general” and is a “perfectionist about things.” They get “frustrated when people aren’t understanding [them]” and are “delayed in social/emotional communication.” If adults don’t realize the Student is struggling, they “might then move to bigger behaviors such as hitting [their] sister, screaming ‘no no no no,’ sitting on the floor or ‘turning to stone’ and refusing to move.”
- iv. The Student is “saggy” in their chair, “has low muscle tone,” and “sometimes falls out of [their] chair.”

e. Goals:

- i. Social/Pragmatic: When given pragmatic visuals or a social situational video, the Student will identify, explain, and/or role play appropriate social behaviors with minimal adult cues at 80% accuracy.
- ii. Language: The Student will identify the meaning of targeted figurative language forms used in text passages given a field of 3 written choices at 80% accuracy.
- iii. Reading Comprehension: When given instructional level passages, the Student will use visual and context cues to answer inferential questions, and to determine character motivations, with minimal adult support, with 80% accuracy.
- iv. OT-Core Strength: The Student will demonstrate improved core strength/postural control as evidenced by engaging in fine motor tasks (i.e., board games, visual motor activities) for 10-minutes and maintaining a correct posture, with no more than 1 cue to adjust their position.

- v. Social/Emotional: The Student will engage in shared activities by commenting, asking on topic questions that are appropriate to the activity, and responding to questions or comments on topic with their communication partner with 80% accuracy.
 - vi. Math: When presented with word problems, the Student will identify the relevant information from the word problems, choose the correct function and write out the equation on paper or digitally, solving it correctly in 80% of opportunities.
 - vii. Language Arts: When presented with open ended questions, the Student will create a paragraph about a topic of interest by organizing their information, getting their thoughts onto paper digitally or written, and will formulate a paragraph with a beginning, middle and end, in 3/5 opportunities.
 - viii. OT-Written Output: The Student will produce a 4-5 sentence written response, utilizing word process equipment/programs (e.g., Google Document, voice typing, and/or graphic organizers) as seen in 4 out of 5 trials as evidenced by documented observations and work samples.
- f. Specially Designed Instruction (SDI):
- i. Speech/Language: 30 minutes weekly at Virtual Site
 - ii. Social Skills: 10 minutes weekly at Virtual Site
 - iii. Language Arts: 20 minutes weekly at Virtual Site
- g. Related Services:
- i. Occupational Therapy (OT): 80 minutes monthly at Virtual Site
- h. Accommodations: Scribe and/or typing available/speech to text up to 5 times daily, Alternate methods to demonstrate knowledge: verbal answers, Multiple choice assessments when available, Adult support for behavior and academic support during instruction, White board available for writing, Flexible seating available, Preferential seating near important information/teacher, Frequent breaks, Visual supports, Student device available, Sensory supports available, Flexible learning schedule, Online interactive models, Check for understanding, Narration for written texts.
- i. Supports for School Personnel: Consultation to parent and staff by the Student's case manager for 30 minutes monthly.
- j. Non-Participation Justification: "[Charter School] is a choice home-based school: students are not pulled out of academic or extracurricular settings in this model." "[Charter School] follows a full inclusion model where each student works individually with a teacher. This is not considered a pull out."
5. According to the Special Education Placement Determination completed by the previous district on October 3, 2022, the Student's IEP team considered placement in "[Charter School] WITH support services," and placement in "[Charter School] with NO support services." The

first placement was selected because it, “Best meets the students individual needs” while the second option, “Doesn’t provide adequate specialized instruction.”

6. On October 3, 2023, the Parent emailed the District’s Special Programs Director (Director) regarding their intent to re-enroll the Student in the District and requested an IEP meeting to discuss placement, including the possibility of an online placement, for the Student. On or about that same date, the Parent also contacted the District’s online alternative program (Online Program) requesting information regarding its curriculum.
7. On or about October 6, 2023, the Director and an administrator from the Online Program (Administrator) met with the Parent to discuss the Student’s transition back to the District. At this meeting, the Parent indicated their intent to enroll the Student in the Online Program, and the Director and Administrator explained how services comparable to the Student’s most recent IEP could be implemented in that setting. The Director explained that, while the general education curriculum is primarily delivered virtually, special education services are typically provided in-person at the Student’s neighborhood school.
8. According to written notes taken by the Director at the October 6, 2023 meeting, the Parent shared that the Student was “advanced in math and science,” was “working grade levels ahead,” and was “80% finished with 6th grade,” despite being in the fifth grade. The Parent expressed that they were unsure how the Student would do in a classroom environment when dysregulated and asked if the District could complete a Functional Behavioral Assessment (FBA) at the Online Program. The Director confirmed that an FBA could be completed. The Director further shared that the District would be able to provide a FAPE to the Student at their neighborhood school if the Parent chose not to enroll in the Online Program.
9. On October 7, 2023, the Parent sent an email to the Director and other District staff confirming that they had enrolled the Student in the Online Program and providing lengthy detail regarding the instruction that the Student received while enrolled in the Charter School. The Parent also noted that they intended the Online Program to be a “bridge” between the Student learning at home and eventually attending school in person. The Parent also requested an FBA and detailed the accommodations in the Student’s most recent IEP.
10. The Student’s previous district provided the Parents with a Prior Written Notice (“PWN”) dated October 9, 2023, which indicates that the IEP team, including the Parents, met on September 6, 2023 to begin developing the Student’s IEP. Given that the Speech Language Pathologist and Occupational Therapist were not available for the meeting, the IEP team “planned on revisiting the IEP” once those team members could attend. As a result, the PWN states that the IEP had not yet been completed. The PWN goes on to detail the outcome of discussions at the IEP meeting regarding the Parents’ request for one-to-one adult support for the Student, which was refused by the school district, and the Student’s need for assistive technology. Finally, the PWN notes that, as of that date, the Student no longer attends school in the previous district.

11. The previous district provided the District with an annual IEP for the Student dated September 6, 2023 (September 2023 IEP) but informed the District that the September 2023 IEP was only a draft and had not yet been completed. The September 2023 IEP is nearly identical to the September 2022 IEP and does not appear to have been updated with recent information.
12. The Student began attending the Online Program on October 10, 2023. October 11-13, 2023 were non-attendance days for students in the District. The Student took a tour of the middle school where their special education services would be provided on October 16, 2023 and began receiving SDI on October 17, 2023.
13. A special education teacher from the Student's previous district sent a letter to the District, dated October 19, 2023, describing the special education services they provided to the student as well as some of the Student's educational needs and suggested accommodations. The letter notes that the Student requires adult support to utilize strategies for self-regulation and benefits from having access to fidgets. Additionally, the letter describes the Student's struggles with asking questions of their communication partner, identifying important information when reading, and assigning intent to characters.
14. Between October 17, 2023 and October 25, 2023, the District made multiple and frequent attempts to identify a mutually agreeable date and time to convene an IEP meeting for the Student. While there was some difficulty identifying a date that worked for both the Parent and District staff, an IEP meeting was ultimately scheduled for November 1, 2023.
15. On October 24, 2023, the Parent emailed the Director inquiring about the status of a Consent for Evaluation for an FBA and requesting that the District conduct the following additional assessments of the Student:
 - a. Speech and Language, primarily focusing on pragmatic language, social language usage, and other appropriate areas;
 - b. OT, focusing on functional performance within a school setting;
 - c. Physical Therapy (PT);
 - d. Specific Learning Disability (SLD) testing, specifically for the purpose of determining appropriate services for the Student, and not to consider an additional category of eligibility for special education.
16. On October 26, 2023, the Parent emailed the Director and requested that the District conduct an Assistive Technology (AT) Assessment, in addition to the assessments previously requested. In the same email, the Parent also requested to audio-record the November 1, 2023 IEP meeting as an accommodation for the Parent's own disabilities.
17. Also on October 26, 2023, the District provided the Parent with a Consent for Evaluation proposing to conduct an FBA of the Student, as requested by the Parent. The Parent signed and returned the Consent for Evaluation on the same date.
18. On October 27, 2023, the Director sent an email to the Parent denying their request to audio-record the IEP meeting scheduled for November 1, 2023. In the alternative, to accommodate

the Parent's need for record of the meeting, the Director offered to have a District employee take "contemporaneous, verbatim notes" that would be provided to the Parent. In the email, the Director also informed the Parent that they would be unable to conduct evaluation planning at the November 1, 2023 meeting, regarding the additional assessments requested by the Parent, because there would not be sufficient time and because all staff required for evaluation planning would not be present on that date.

19. On October 30, 2023, the Parent emailed the Director and other District staff members with written information to "assist in the 'Present Levels' section" of the Student's upcoming IEP." The Parent attached four documents to the email, totaling more than twenty pages, titled: 1) "[Student's] Strengths, Interests, and Preferences," 2) "Parent Concerns," 3) "Parent as Teacher Input for each Present Level section," and 4) "[Student's] IEP Over Time." The Parent requests that the "Parent Concerns" be copied and pasted directly into the IEP. The Parent goes on to share that the last two attachments were created for their own purposes and advises staff to "please feel free to ignore" the last two attachments if it is too much information to review, clarifying that this information "certainly wasn't meant to copy & paste into the IEP."
20. On November 1, 2023, shortly before the start of the Student's IEP meeting, the Parent sent an email to District staff with two additional documents entitled "IEP Goals Idea Bank" and "Accommodations Brainstorm". In the email, the Parent indicates that the documents are being shared so that staff has access to them during the meeting, but that staff do not need to review them prior to the meeting. The Parent explains that these documents contain ideas for the Student's IEP, but the Parent is not expecting that all of the proposed goals or accommodations will be included in the IEP.
21. The District convened an IEP meeting for the Student on November 1, 2023 (November 1, 2023 IEP).³ The November 1, 2023 IEP includes, among other things:
 - a. Special Factors: The Student is identified as exhibiting behavior that impedes their learning or the learning of others, having communication needs, and needing assistive technology devices or services. No other special factors are identified for further consideration by the IEP team.
 - b. Input from Parents: This section reflects the concerns emailed by the Parent on October 20, 2023, including that the Student "may stall academically due to change in setting and curriculum," may try to leave campus if they become distressed or scared, may not be able to communicate appropriately if they don't understand a concept in class, and that the Student's disabilities will "impede assessments and teacher understanding of [their] actual capabilities. In addition, the Parent notes that the Student "excels in math and science" and "can progress through the regular curriculum in all academic areas with accommodations," but "is easily distracted from learning."
 - c. Present Levels of Academic Achievement:

³ Due to a clerical error, the IEP is dated October 31, 2023.

- i. Reading: The Student is a “great reader, but struggles with comprehension and inferring.” On the EasyCBM assessment, administered in Fall 2023, the Student was able to answer vocabulary questions with 50% accuracy and comprehension questions with 60% accuracy. When the test material was read aloud to them, however, the Student was able to answer both vocabulary and comprehension questions with 75% accuracy. On MAP testing completed in Fall 2023, the Student scored in the 44th percentile with accommodations.
 - ii. Math: The Student “really enjoys doing math” but “will voice that [they don’t] like word problems because they are hard.” On the EasyCBM assessment, administered in Fall 2023, the Student scored in the 85th percentile. On MAP testing completed in Fall 2023, the Student scored in the 99th percentile with accommodations.
 - iii. Writing: The Student completed a writing assessment with their teacher in the Online Program. They had difficulty generating ideas of what to write and preferred to write about actual events rather than fiction. The Student has difficulty writing by hand, but “does much better typing” and is able to use voice-to-text. On MAP testing completed in Fall 2023, the Student scored in the 66th percentile with accommodations.
 - iv. Impact of Disability: The Student qualifies for services as a student with an Autism Spectrum Disorder. They require a scribe and/or typing, speech to text, alternative methods to demonstrate knowledge, multiple choice assessment when available, adult support for behavior and academics, white board for writing, flexible seating, preferential seating, breaks, visual support, technology device, sensory support, check for understanding, work reduced to show proficiency, chunk assignments, transition warning, point card, FBA, Health Plan.
- d. Present Levels of Functional Performance:
- i. Communication: The Student “has been working on making inferences within a variety of different contexts using emotions and feelings.” The Student “requires occasional reminders on what it means to make inferences . . . to correctly one inference in text with 3 out of 5 opportunities.” The Student “working on sequencing 5-6 steps for story recall.”
 - ii. Social/Behavior: “[The Student] uses [their] iPad or computer during writing assignments. [The Student] struggles when [they] can’t get it to work quickly, but is able to wait until the issue can be resolved.”
 - iii. Fine Motor/Assistive Technology: Reflects information from the October 2022 IEP, including that the Student’s handwriting “is very immature” but the Student “appears to have the skills needed to produce writing at more age-appropriate levels.” In addition, the Student “has low muscle tone” and “rarely sits up in [their] chair.”
 - iv. Impact of Disability: The Student demonstrates the need for SDI in language arts, math, communication, and social skills.

e. Goals:

- i. Social Skills: The Student will improve their ability to initiate work tasks independently, without prompting as measured by teacher observation and data collection with 80% accuracy.
- ii. Social Skills: The Student will increase their ability to sustain attention in class for at least 20 minutes without becoming distracted or disruptive with 80% accuracy, as measured by teacher observation and data collection.
- iii. Math: When presented with multi-step word problems, the Student will identify the relevant information including inferential information from word problems, choose the correct function and write out the equation on paper or digitally, solving it with 80% accuracy as measured by work samples or informal assessments.
- iv. Language Arts: With teacher guidance and support, the Student will type 3 complete paragraphs with 3-5 complete sentences to include correct capitalization and punctuation while showing understanding of the standard conventions of English utilizing strategies such as anchor charts, graphic organizers, and sentence starters with 70% accuracy as measured by work samples and informational assessment. Criteria: 3 paragraphs, 4-5 sentences, 70% accuracy, Capitals: 70% accuracy, Punctuation: 70% accuracy.
- v. Language Arts: When given an instructional level passage, the Student will accurately answer inferential questions with 80% accuracy, as measured by teacher observation and informational assessments.
- vi. Language Arts: When given an instructional level passage, the Student will accurately make inferences about characters' emotions in written text with 80% accuracy, as measured by teacher observation and informational assessments.
- vii. Social Skills: The Student will increase their ability to use self-advocacy skills (communicate with teacher to seek help, clarify instruction or requirements for academic tasks) with 70% accuracy, as measured by teacher observation and data collection.
- viii. Social Skills: The Student will increase their ability to use self-evaluate/monitor skills with 70% accuracy, as measured by teacher observation and data collection.
- ix. Speech and Language: the Student will read or listen to a grade-level text (informational or literature) and make one inference from the text on 4 of 5 opportunities in the speech therapy setting with one reminder of the definition of an inference as needed. The Student will identify the clues in the text that facilitated that inference in 4 of 5 observed opportunities with one verbal hint from the therapist as needed during a speech therapy session.

- x. **Speech and Language:** When provided with visual organization strategies and minimal verbal cues given, the Student will tell and/or retell an organized cohesive story containing key and relevant components (organized notations, character, setting, initiating event, response/characters feeling, plan, attempts/details, consequence, resolution, organization (in sequence and makes sense), and accurate grammar for 8 out of the 10 questions collected.

 - f. **SDI:**
 - i. Language Arts: 100 minutes weekly in Special Education Class
 - ii. Math: 40 minutes weekly in Special Education Class
 - iii. Social Skills: 30 minutes weekly in Special Education Class
 - iv. Communication: 30 minutes weekly at Virtual Site

 - g. **Related Services:**
 - i. OT: 480 minutes yearly at All School Sites
 - ii. Transportation Service: 2 trips daily to/from school

 - h. **Accommodations:** Scribe and/or typing available/speech to text (during instruction, when writing is more than one sentence), alternate methods to demonstrate knowledge, multiple choice assessments when available, adult support for behavior and academic support, white board available for writing, flexible seating available, preferential seating near important information/teacher, frequent breaks, visual supports, technology devices, sensory support, check for understanding, work reduced to show proficiency, chunk assignments, transition warning, point card, Health Plan.

 - i. **Supports for School Personnel:**
 - i. Behavior Consultation: 600 minutes yearly
 - ii. Autism Consultation: 180 minutes yearly

 - j. **Non-Participation Justification:** The Student will be removed from the general education setting for 200 minutes (10%) per week in order to receive SDI in language arts, math, social skills, and communication. They will participate in the general education setting approximately 90% of the time.
22. At the start of the November 1, 2023 IEP meeting, the Student's special education teacher and case manager (Special Education Teacher) provided each IEP team member, including the Parent, with a document containing proposed information to be included in the Student's IEP (Draft IEP). The Draft IEP included the Student's scores from recent assessments, other information regarding the Student's present levels, previous IEP goals, suggested goals in the areas of academics and social skills, current accommodations, and current special education service levels. Other areas of the Draft IEP, including student strengths, parent concerns, special factors, proposed special education services, and placement were left blank.

23. When asked if District had staff meetings outside of the November 1, 2023 IEP meeting, or any of the Student's other IEP meetings, to determine placement or services for the Student, the Director responded that there had been no such meetings during the time period relevant to the Complaint. The only meeting that they could recall without the Parent present was when the Director met with staff prior to the Student beginning in-person instruction in October 2023 to determine how to provide services comparable to the IEP from the Student's previous District and to discuss the Student's school schedule.
24. During an interview, when asked how the present levels in the November 1, 2023 IEP were developed, the Special Education Teacher shared that they were based on the Student's IEP from their previous school district, input from the Student's previous teacher (who was in attendance at the IEP meeting), input from the Parent, MAP testing completed by the Parent, a writing sample completed by the Student in the Online Program, and results of the Easy CBM, which the Special Education Teacher had administered. When asked how the goals were developed, the Special Education Teacher shared they were based on the present levels, the goals from the Student's previous IEP, and input from the Parent and the Student's previous teacher.
25. When asked why the IEP did not include specific goals related to OT, as had been included in the Student's previous IEP, the Director explained that the needs previously addressed by the OT goal related to writing were addressed by the proposed Language Arts goals. The Director recalled that, while the previous IEP also had an OT goal related to improving core strength, District staff did not believe that this was an area of need for the student in the in-person school setting. Core strength did not appear to be impacting the Student's ability to access their education, and activities to improve core strength were already incorporated in the Student's physical education class. The Director further noted that the Student's educational needs in their previous setting, which was primarily in the home or online, may differ from the Student's needs in an in-person school setting.
26. When interviewed by the Complaint Investigator, both the Director and the Special Education Teacher acknowledged that, while the IEP contained general information regarding the Student's academic and functional performance, it did not include specific baseline data aligned to each and every goal and objective. Both individuals explained that the absence of more specific baseline data was because the Student had only been in attendance in the District for approximately twelve school days at the time the IEP was developed. In addition, the most recent IEP from the Student's previous district was over a year old. The Special Education Teacher shared that they collected as much information as possible, without overwhelming the Student as they transitioned into a new educational setting. The District planned to reconvene the IEP team after a few weeks to make any necessary updates after District staff had more time to work with the Student and gather data.
27. The Meeting Minutes from the November 1, 2023 IEP meeting reflect a significant amount of input provided by both the Parent and the Student's previous teacher in the development of both the present levels and the goals. A review of the November 1, 2023 IEP as compared to the Draft IEP shows that changes were made to the proposed goals during the IEP meeting based on input provided by the Parent.

28. The Director and the Special Education Teacher shared that both the Parent and the Previous Teacher expressed agreement with the goals and objectives proposed during the November 1, 2023 IEP meeting and that the Parent did not object to the goals that were adopted until after the IEP meeting. When interviewed, the Parent recalled that they had disagreed with one of the social skills goals, but that the District still included it in the IEP. The Parent also explained that they have difficulty interpreting new information when it's presented during the meeting and finds it helpful to have draft documents in advance.
29. According to the Special Education Placement Determination completed on November 1, 2023, the Student's IEP team considered three placement options including: 1) Reg Class 80% or more, 2) Reg Class 80% or more with an Abbreviated Schedule per parent request for a shortened day, and 3) Reg Class 80% or more in [Online Program]. The IEP team selected the first option as the Student's placement. The Meeting Minutes from the November 1, 2023 IEP confirm that each of the placement options referenced on the Special Education Placement Determination were discussed during the meeting.
30. On November 2, 2023, the Special Education Teacher emailed a PWN to the Parent detailing the outcome of the November 1, 2023 IEP (November 2, 2023 PWN). While the PWN is dated October 30, 2023, the Special Education Teacher shared that this was a clerical error and the date on the email confirms that the document was provided to the Parent after the IEP meeting. In their email, the Special Education Teacher shares that the PWN is not complete, but "includes the most time sensitive information" and that they will "follow up with an additional PWN after reviewing the notes further." While the PWN was represented as being incomplete, it nevertheless contains a significant amount of detail regarding decisions made at the November 1, 2023 IEP meeting, including the amount of special education services and the accommodations that the Student would receive, and the District's response to requests made by the Parent at the meeting.
31. In emails dated November 7, 2023 and November 8, 2023, the Parent expressed disagreement with several statements in the November 2, 2023 PWN, including an error in the calculation of the Student's removal from general education, and requested that additional information be included in the PWN. In response to concerns raised by the Parent, the District revised the PWN on two occasions and provided the Parent with updated copies. One of the revisions made to the PWN was that the Student would be removed from general education for 10% of their school day, rather than 16% as erroneously noted in the original PWN.
32. In an email to the District dated November 8, 2023, the Parent again requested that they be permitted to record the Student's IEP meetings as an accommodation for their disability. The Parent explained that the "verbatim" notes provided by the District after the last meeting were not helpful and that they required a recording to fully understand and participate in future meetings. The Parent also requested a copy of the District policy regarding recording IEP meetings and "the statement of how the district will handle disability requests if a recording is requested due to a disability."

33. During the first two weeks of November 2023, the Parent sent multiple additional and lengthy emails to District staff with questions about the Student's services, requests for revisions to the Student's IEP and the November 2, 2024 PWN, requests for clarification of portions of the IEP, and expressing dissatisfaction with multiple aspects of the IEP and the IEP meeting. Among the Parent's concerns was the manner in which OT services were provided to the Student.
34. On November 13, 2023, the Director sent the Parent an email with an eleven-page written response that attempted to address each of the Parent's questions and concerns. In response to the Parent's concern regarding the implementation of OT services, the Director wrote, "OT is not being removed as a direct service for [the Student]. OT is listed as a related service, which is how it was listed on [their] previous IEP as well . . . OT related services include both direct intervention with the therapeutic use of occupations and activities with the child present . . . as well as consultation for collaborative problem solving with parents, teachers and other professionals involved in a child's program." In response to the Parent's request to record the Student's IEP meetings, the Director requested that the Parent provide documentation of their disability and information as to why audio recording is necessary, as opposed to some other accommodation.
35. In an email dated November 16, 2023, the Parent provided the Director with information regarding their disability and further explanation as to why they required the accommodation of audio-recording IEP meetings. The Parent also requested the District policy outlining the prohibition against recording. The following day, the Director emailed the Parent a link to the District's board policy regarding student use of personal electronic devices at school. While the policy addresses student use of recording devices at school, it does not address recording of IEP meetings by parents. The Director also included a screenshot of a portion of the District's "Special Ed Handbook" which states, "As a rule, JCSD does not permit the audio recording of IEP/Placement meetings."
36. On November 17, 2023, the Parent provided the Director with a letter from a Licensed Psychologist who had previously evaluated the Parent. The letter describes the Parent's disability and indicates that the Parent "would likely benefit from being allowed to audio record or have a transcript of meetings" in support of their request to record meetings. On November 20, 2023, the Director emailed the Parent indicating that they would be permitted to record future meetings so long as they alerted staff at the beginning of the meeting that they would be recording and that they understood the District would also be recording.
37. An IEP Amendment Meeting was convened for the Student on November 21, 2023 (November 21, 2023 Amendment)⁴. The purpose of this IEP meeting was to review the Student's educational program and revise the IEP if needed. The meeting was facilitated by a neutral facilitator contracted by the Department (ODE Facilitator) and was recorded. The following revisions were made to the Student's IEP:

⁴ The present levels section of the November 21, 2023 IEP states that the IEP was amended on November 27, 2023. This was a clerical error.

- a. SDI in the area of Language Arts (previously for 100 minutes weekly) was changed to Written Language for 180 minutes weekly and Reading for 170 minutes weekly, both in the Special Education Class.
 - b. The Non-Participation Justification section was amended to reflect the increased SDI, stating that “[The Student] will be removed from the general education setting for 420 minutes per week (21%) per week in order to receive specially designed instruction in reading, writing, math, social skills, and communication.”
 - c. At the Parent’s request, the accommodation for “Scribe and/or typing available/speech to text” was revised to state that “Student is never required to write by hand, but may choose to when writing is less than 1 sentence.”
38. When asked why updated baseline information for the Student’s goals and objectives had not been included in the November 21, 2023 Amendment, the Director acknowledged that updated information could have been documented in the present levels at that time, but recalled that decisions about revisions to the Student’s IEP were based on “robust discussions” about how the Student was performing, even if not specifically documented as baseline data in the present levels. The Director does not believe that the absence of more detailed information in the present levels impacted the goals or services in the Student’s IEP.
39. When asked why the Student’s SDI in Language Arts was split into separate items for Reading and Writing in the November 21, 2023 Amendment, the Special Education Teacher explained that fifth grade students receive reading and writing instruction separately and the IEP team created two separate categories of SDI so that the services were more clearly defined. When asked why the overall minutes of SDI in these areas was increased, the Special Education Teacher reported that they had more information regarding the Student’s needs at that time and that the Student “struggled in writing in general” and “needed a lot more support.” Reading SDI was increased because the Special Education Teacher had reached a better understanding of how much time they would need each week to “help [the Student] learn to slow down” to improve their reading comprehension.
40. As noted in the Meeting Minutes from the November 21, 2023 IEP meeting, the Parent reiterated their ongoing concern that the Student’s OT services had been changed from direct services to consultation and requested that the change be reflected in a PWN. The District explained that the OT services were “now set up so it can be either” and that the OT as written in the IEP, could be either direct or consultation services and that the Occupational Therapist “is mostly observing how [the Student] approaches and reacts to environmental demands,” noting that services could be increased after the OT evaluation if warranted.
41. An updated Special Education Placement Determination was completed on November 21, 2024. The IEP Team changed the Student’s placement to “40%-79% Reg Class with pull out the resource room” consistent with the increased amount of SDI in the November 21, 2023 Amendment.
42. The District provided the Parent with a PWN, dated November 21, 2023, detailing the decisions made at the November 21, 2023 Amendment. Regarding the Parent’s concern

about the implementation of OT services, the PWN states, “The previous PWN should state that OT was changed to related service from direct service to consultation.” When asked what this statement was meant to convey, the Director explained that they were attempting to convey that related services could include both direct services and consultation.

43. On November 30, 2023, the District completed a Progress Report for the goals and objectives from the November 1, 2023 IEP, which was provided to the Parent. According to the Progress Report, the Student made the following progress:
- a. Social Skills: “In the general education setting, [the Student] is able to initiate familiar tasks without prompting 30% of the time. In the resource room setting [they are] able to start familiar tasks without prompting 50% of the time. In both settings [they are] able to start familiar tasks when prompted 90% of the time.”
 - b. Social Skills: “During general education instruction [the Student] is able to sustain [their] attention and focus while doing a non preferred [*sic*] task 60% of the time. If the instruction is preferred [they] will stay focused 100% of the time. With prompts, in the resource room setting [the Student] stays on task 100% of the time. The classroom is very structured, so there really isn’t any down time. [The Student] has not shown any out of the norm disruptive behavior in either setting.”
 - c. Math: “During math instruction and given a single step word problem, [the Student] is able to identify the relevant information and choose the correct function 50% of the time. We have only done single step word problems using addition and subtraction.”
 - d. Language Arts: “When given a computer and a graphic organizer [the Student] is able to write 1 complete paragraph. [They are] currently working on a descriptive essay, which consists of using [their] five senses to describe an item. [They were] able to write 1 paragraph using 7 sentence and [their] 5 senses. [Their] spelling was 100% accurate, but [they] didn’t use any punctuation and [they] used correct capitalization 71% of the time.”
 - e. Language Arts: “When given a 3rd grade level passage, [the Student] was able to answer inferential question with 50% accuracy. When given a 2nd grade level passage, [the Student] was able to answer inferential question with 75% accuracy.”
 - f. Language Arts: “When given an instructional level passage and asked to read it to [themselves], [the Student] is able to make inferences 30% about the characters emotions. When an instructional level passage is read to [the Student], [they are] able to make inferences 50% about the characters emotions.”
 - g. Social Skills: “[The Student] was able to ask an adult/teacher for help 8 times while being observed. [The Student] is quick to say if [they don’t] understand or doesn’t like something and most of the time [they] will just blurt it out. When [they are] prompted to ask for help appropriately, [they are] able to do with 100% accuracy. [The Student] is very respectful and polite to everyone around [them].”

- h. Social Skills: “[The Student] is doing self-evaluation/monitoring using [their] point card. [The Student] struggles to do it during the class time, but seems to remember how [they have] been feeling during the day. We are working on filling it out before, during, and right after class. [The Student] has lost or misplaced 3 point cards.”
 - i. Speech and Language: “When given a grade level text with picture visuals, [the Student] is able to make 1 inference with 3/5 opportunities with min [sic] to no cues.”
 - j. Speech and Language: “Given a variety of strategies, [the Student] is able to retell a story using pictures or visuals including organized notations, character, setting, initiating an event, response/characters feeling, plan, and details with 6/10 opportunities. Currently [the Student] is utilizing a visual word bank with all the important information needed to retell the story. Minimum to moderate cues given.”
44. Between October 24, 2023, when the Parent requested additional assessments of the Student, and November 16, 2023, multiple and frequent attempts were made to schedule an evaluation planning meeting at a mutually agreeable date and time. On November 16, 2023, an evaluation planning meeting was scheduled for November 29, 2023. When asked why the District did not conduct evaluation planning on an earlier date, such as at the November 21, 2023 Amendment, the Director explained that all of the team members required for evaluation planning were not available on November 21, 2023. Further, the District prioritized the development of a new IEP for the Student over the completion of additional evaluations.
45. An Evaluation Planning Meeting was convened for the Student on November 29, 2023 (Evaluation Planning Meeting). The meeting was facilitated by the ODE Facilitator and was recorded. At the meeting, the evaluation planning team discussed the following assessments as requested by the Parent:
- a. Speech and Language, primarily focused on pragmatic language, social language usage, and other appropriate areas;
 - b. Occupational Therapy, focused on functional performance within a school setting;
 - c. Physical Therapy;
 - d. Specific Learning Disability Testing, focusing on possible dysgraphia. The Parent clarified that they were not seeking an evaluation to identify another area of disability but wanted the assessment to help determine the special education services and supports that the Student required;
 - e. Assistive Technology; and
 - f. Cognitive Assessment.
46. At the Evaluation Planning Meeting, the Occupational Therapist proposed to complete assessments in the areas of fine motor and sensory processing. Specifically, they discussed completing the Bruininks-Oseretsky Test of Motor Proficiency (BOT) and the Sensory Processing Measure (SPM). The Parent shared that the Student received private OT services and that the private therapist from the Child Development and Rehabilitation Center (CDRC) may have completed some of those assessments. The Parent was concerned that some of the

tests would not be valid if they had been administered within the past year. The Parent recalled that the testing had been done approximately one year prior. The Occupational Therapist noted that they believed the BOT could be given a second time after six months, but that they could not recall when the SPM could be repeated.

47. In response to the Parent's disclosure of private OT testing, the Director explained that it could delay the OT assessment of the Student. The Director and School Psychologist suggested that the Parent provide a copy of the assessment report to the District as it would be quicker than requesting a copy from the CDRC. The Parent shared that they would contact the private occupational therapist and attempt to get a copy of the report, but also requested to sign a Release of Information (ROI) so that the District could also request the report from the CDRC.
48. Also at the Evaluation Planning Meeting, the Speech Language Pathologist proposed to conduct assessments in the area of pragmatic language. The Parent shared that the Student's previous school district had conducted a speech and language evaluation and that the report was included in the educational records that were provided to the District when the Student enrolled. When interviewed, the Director confirmed that the District had a copy of the evaluation from the previous school district.
49. The IEP team also discussed the Parent's request for an Assistive Technology evaluation. District staff, and an AT Specialist from the ESD, explained that the Parent's concerns about appropriate assistive technology tools could be addressed through the other evaluations, particularly the OT evaluation. The District indicated that an evaluation was not necessary to provide the technology tools that the Student needed to access their education. When interviewed, the Parent shared that they understood and agreed with this decision at the time of the meeting, but then changed their mind and disagreed after the meeting.
50. When interviewed by the Complaint Investigator, both the Director and the School Psychologist recalled the Parent sharing that comprehensive testing of the Student had been completed by the CDRC, including in areas other than OT. The video recording of the Evaluation Planning Meeting, however, clearly shows that the only mention of previous testing by the CDRC was in relation to an OT evaluation.
51. On December 5, 2023, the Parent emailed the Director regarding the CDRC evaluation stating, "I just heard back from the therapist from CDRC (see below). If there is an ETA on when the consent forms would be available, I'd appreciate it." The email included a message from the CDRC occupational therapist that stated, "January 2022 was the most recent comprehensive testing I believe, so [the Student] is due! Usually we repeat it in Neurodevelopmental Clinic when kids come for follow-up with the team but it doesn't look like [they were] seen in 2023. I'd certainly be happy to talk with anyone if they have specific questions."
52. The Director responded to the Parent via email on December 6, 2023 stating, "What we will need to determine what testing is needed is the most recent evaluation report from CDRC. We can send a consent form for you to sign to allow for the exchange of information and we can request the report. During the meeting we discussed that it is typically faster when the

parent requests that report from them and sends it to us . . . Once we have that and the team is able to determine what assessments are needed, then we will send home the consent for evaluation form.”

53. The District made multiple attempts to secure the Student’s evaluation report from the CDRC. Due to confusion and/or errors when filling out the Release of Information form, there was a delay in the District receiving the report. On January 22, 2024, the Parent emailed the Special Education Teacher, Director, and other District staff stating, “In regards to the paperwork from CDRC, I don’t understand why it is keeping us from getting the release for evaluation for me to sign. When we talked during the meeting we discussed that any testing done was over a year ago minimum and at that time it was for a test that can be done every 6 months (OT). They haven’t done psych testing in years . . . Again, psych testing hasn’t been done by CDRC in at least 2 years, possibly longer. OT testing was over a year ago, possibly 2 years ago. I don’t feel like any of that should impact getting the forms for me to sign.”
54. On January 26, 2024, the District received a copy of the CDRC evaluation records. According to the School Psychologist, there were no evaluations completed by CDRC that impacted the District’s proposed evaluation of the Student.
55. On January 29, 2024 the District provided the Parent with a Consent to Evaluate, dated January 26, 2024, that proposed evaluating the Student in areas discussed during the Evaluation Planning Meeting on November 29, 2023. The Parent consented to the proposed evaluations on the same date. The Consent to Evaluate included the following evaluations:
 - a. Fine/Visual Motor Development and Self-Help Skills: Bruininks-Oseretsky Test of Motor Proficiency (BOT);
 - b. Academic Achievement: Kaufman Test of Education Achievement, Wechsler Individual Achievement Test;
 - c. Cognitive Ability: Wechsler Intelligence Scales;
 - d. Behavior/Social Emotional: Sensory Processing Measure (SPM);
 - e. Communication: Clinical Evaluation of Language Fundamentals (Social Pragmatics section only), Functional Communication Assessment;
 - f. Gross Motor: Pedi-CAT (Pediatric Evaluation of Disability Inventory-Computer Adaptive Test);
 - g. Observation, Teacher Interview, Student Interview, and File Review.
56. On or about December 2023, the District generated a Report Card for the Student, which reported on the Student’s progress in the general education curriculum during the first term of the 2023-24 school year. The Report Card notes that not all standards were assessed at that time in the school year. On the standards that were assessed, in Physical Education, Reading, Literature & Information Text, and Math, the Student received a score of “3” indicating that “Achievement demonstrates mastery that consistently and satisfactorily meets the end-of-year grade level learning standards.” In “Characteristics of a Successful Learner,” the Student scored a “3” or “4” in all areas assessed, demonstrating that the Student demonstrated mastery in those areas that either met or exceeded grade level learning standards.

57. An IEP Amendment Meeting was convened for the Student on January 29, 2024 (January 2024 Amendment). The purpose of this IEP meeting was to review the Student's educational program and revise the IEP if needed. The meeting was facilitated by the ODE Facilitator and was recorded. The following revisions were made to the IEP:
- a. Several clerical errors were corrected.
 - b. At the Parent's request, and after discussion, the Social Skills goal regarding "attention in class" was removed. The IEP team agreed to remove the goal, but to continue to monitor the Student's attention in class through use of the Point Card accommodation.
 - c. The location of Math SDI was changed from the special education classroom to the general education classroom. The Meeting Minutes reflect that the Parent requested the Student spend more time in general education during math instruction.
 - d. The accommodation of "adult support for behavior and academic support" was changed to "adult support around changes/new routine/transitions." It was noted in the Meeting Minutes that the Student did not typically access the Instructional Assistant (IA) in the classroom and the General Education teacher believed they could support the Student without an Instructional Assistant.
 - e. The accommodation of "preferential seating near important information/teacher" was changed to "preferential seating with extended learning space."
58. According to the Meeting Minutes from the January 2024 Amendment Meeting, the Parent expressed concern that that, in the previous district, the Student had received one-to-one services with an occupational therapist to work on core strength and hand strengthening exercises. The Parent expressed their belief that the Student would benefit from receiving those direct services. There was also a discussion regarding the Student's use of a computer to type assignments in class. The Parent shared that they did not want the Student handwriting in class. The Special Education Teacher reported that they reminded the Student that they could use a computer but, unless the assignment is more than a paragraph, the Student opts out of using the computer and chooses to handwrite half of the time. The Special Education Teacher stated they would continue to prompt the Student to use a computer when needed. The Parent also shared that they had just discovered the Student's IEP in their backpack and requested that future paperwork be picked up in the office.
59. The Complaint Investigator asked the General Education Teacher to describe how the Student's accommodations related to writing were implemented in the classroom. They shared that, when there was an IA in the classroom, the IA would scribe for the Student when they got tired of writing. The Student also had access, at all times, to a computer for typing. The General Education Teacher would remind the Student to use the computer, but the Student would often choose to handwrite instead. As the school year progressed, the Student opted to handwrite more often.

60. The District provided the Parent with a PWN, dated January 29, 2024, detailing the decisions made at the January 2024 Amendment. Additionally, the PWN notes that, in the future, the Student's IEPs will be left at the front office and the Parent will be notified.
61. During an interview, when asked how Math SDI was implemented in the general education classroom, the Special Education Teacher explained that, for the first four weeks after the January 2024 Amendment, the Math SDI was implemented in small groups by one of the fifth grade general education teachers under the direction and supervision of the Special Education Teacher. The Special Education Teacher met with the team of fifth grade teachers several times per week to review the provision of SDI and discuss the Student's progress. When the small groups were no longer working on word problems (which was the subject of the Student's math goal) the Special Education Teacher began to create word problems for the Student to work on and review them with an instructional assistant (IA). The IA would then work with the Student and two other students in the general education classroom on those word problems and report back to the Special Education Teacher regarding the Student's performance. The Special Education Teacher monitored the Student's progress by assessing them every other week on their math goal. The Special Education Teacher shared that all of the Student's SDI was provided and that they created a weekly calendar to show the Parent when SDI was provided.
62. The District's autism and behavior consultant (Behavior Consultant) completed an FBA of the Student, with a report dated February 8, 2024. According to the report, the Behavior Consultant conducted a file review, observation, and interviews of the Parent, Special Education Teacher, General Education Teacher, and the Student. The "target behaviors" identified in the evaluation were "Disruptive, defined as verbal outbursts, non-verbal noise-making, and talking out of turn during instruction," and "Off-task (non-disruptive), defined as doing something other than the assigned task, waiting without asking for help when it's needed, takes breaks during fine motor tasks . . . stating that [they don't] want to do the task or assignment, head down and/or hood up." According to input from the Student's teachers, the reported behaviors occurred less than once per week.
63. When the Behavior Consultant observed the Student for the FBA, "Disruptive behaviors were directly observed to occur 1-2 times per hour and were largely attempts to self-advocate. Noncompliant behaviors varied widely depending on the content and expected activity, but the longest period of time in which [the Student] was disengaged due to noncompliance with the task was 8 minutes." The FBA described the response by adults when the Student engaged in one of the target behaviors, noting that "the most frequent response by adults was to explain the directive or what [the Student] should be doing" and that "22.6% of the time, there was no adult response to [their] challenging behavior, apparently because it was so minor as to not be noticed."
64. In the FBA report, the Behavior Consultant concluded that "[The Student] continues to demonstrate a need for instruction in social skills and development of executive functioning. However, [their] behavior has not been observed to significantly impact [their] learning or the learning of others, and a Behavior Support Plan is not needed or recommended at this time. [The Student's] teachers and other staff are already providing the accommodations (as

outlined in [their] IEP) that are allowing for [their] success and continued progress is expected. No additional instruction specific to the identified challenging behaviors is required in order for [them] to access [their] education.”

65. In their *Reply*, the Parent reported that meetings to review the results of the FBA were scheduled for February 13, 2024 and February 20, 2024 but both had to be rescheduled because the Behavior Consultant didn't show up to the meetings. When interviewed, the Behavior Consultant recalled that a meeting had been scheduled to review the FBA on February 13, 2024, but that they had to reschedule due to illness.
66. The Behavior Consultant reviewed the results of the FBA in a meeting with the Parent and the Special Education Teacher on February 27, 2024. This was not an IEP meeting. It is the Behavior Consultant's practice to review the results of an FBA with the family outside of an IEP meeting in an informal setting, and then develop a BSP with the IEP team. At this meeting, the Behavior Consultant shared with the Parent that the Student did not require a BSP. When interviewed, the Behavior Consultant recalled that the Parent was in agreement with the results of the FBA, including the conclusion that the Student did not need a BSP. They described the Parent's reaction to the results of the FBA "as a celebration" that the Student was "doing so well". Given that a BSP was not recommended, the Behavior Consultant could not recall if the FBA had been reviewed at a subsequent IEP meeting.
67. When interviewed, the Behavior Consultant shared that they had been an autism and behavior consultant for nine years and that this was the first time they had completed an FBA and not recommended a BSP. They noted that, based on their evaluation, the Student did not demonstrate the types of maladaptive behaviors at school that the Parent described seeing at home. Any behaviors noted in the FBA were already being addressed by the services and accommodations in the Student's IEP. When interviewed, the Special Education Teacher agreed that the Student did not require a BSP and "behavior was not a barrier to [the Student] accessing [their] education.”
68. On March 22, 2024, the District completed a Progress Report regarding the goals and objectives from the November 1, 2023 IEP, which was provided to the Parent. According to the Progress Report, the Student made the following progress:
 - a. Math: "When presented with a single step word problem, [the Student] is able to identify relevant information 75% of the time. [They are] able to identify inferential information 60% of the time. [The Student] is working in this goal in the general education classroom. [They are] able to engage with peers and work in partners." Attached to the progress report is a sample of the math problems that the Student is completing.
 - b. Language Arts: "When given an instructional level passage, [the Student] is able to answer inferential question verbally with 70% accuracy. [They] often repeat[] part of the passage to replay it in [their] brain or justify [their] answer. When given the assessment [the Student] said [they were] tired and didn't want to write." Sample reading passages with accompanying questions and the Student's responses are attached to the progress report.

- c. Language Arts: “When given a graphic organizer and teacher guidance and the task to write a persuasive essay, [the Student] is able to write 2 paragraphs. [Their] writing starts out strong, but [the Student] needs support to stay on topic. [The Student] has a great vocabulary and is eager to finish [their] writing. [The Student] often wants to just get through it so [they] make simple mistakes. [They are] learning to use spell and grammar check.” Three writing samples completed by the Student are attached to the progress report.
 - d. Language Arts: “When given an instructional level passage [the Student] is able to infer the character’s emotions 70% of the time verbally. [They do] really well talking about what [they] think[] and most of the time come[] up with more than one emotion, but often says [they aren’t] sure.”
 - e. Social Skills: “[The Student] is doing great working on tasks independently. [They are] able to initiate routine tasks independently without prompting in the resource room 70% of the time. In [their] general education classroom [they are] able to initiate routine tasks 50% of the time independently.”
 - f. Social Skills (self-advocacy): “We are still at the prompting phase of this goal. You can see that [the Student] needs or wants something but isn’t sure when or how to ask. [They] will often walk up and ask for something while the adult is in the middle of a conversation with another adult or student. [They are] really good at waiting after being told, but need[] that reminder.”
 - g. Social Skills: “[The Student] is doing very well at self monitoring. [They use] a point card to do this and at times forgets to come get it out of the resource room. [They] will grab it during small group reading and back fill it for the first two periods of the day. We are working on [them] coming into the resource room and grabbing it first thing in the morning. At times [the Student] acknowledges that [they] remembered, but just didn’t want to come in and get it. Other times [they] just say[] [they] forgot.”
 - h. Speech and Language: “[The Student] is able to identify what an inference is and able to make inferences in a variety of scenarios given videos, pictures, and stories. [The Student] is able to identify 2 inference [sic] per task. [They] require[] min [sic] verbal cues to use [their] visuals when making an inference about a picture.”
 - i. Speech and Language: “Currently [the Student] is able to read a short passage and recall 2 characters, the setting, and 2 main ideas with 80% accuracy. [They are] able to use appropriate transition words such as (first, second, then, finally, etc.) with 70% acc. [sic]”
69. On or about March 2024, the District generated a Report Card for the Student, which reported on the Student’s progress in the general education curriculum during the second term of the 2023-24 school year. The Report Card notes that not all standards were assessed at that time in the school year. On the standards that were assessed, the Student had either partially mastered, mastered, or exceeded end-of-year grade level learning standards. Notably, in Math, the Student had exceeded all the learning standards that were assessed.

70. The District completed an occupational therapy evaluation of the Student and documented the results in a report dated April 2, 2024 (OT Evaluation). The OT Evaluation included the results of assessments in the areas of fine motor, upper limb coordination, and sensory processing, as well as a clinical observation. The results of the evaluation included, but were not limited to, the following:
- a. When observing the Student in their classroom, the Occupational Therapist noted that the Student was participating in conversation and did not appear to be distracted by peers. The Student was observed to have a disorganized desk and appeared to need assistance with organization of materials. When evaluating the Student, the Occupational Therapist observed that the Student had a functional grasp and was able copy text. They were able to write the uppercase alphabet from memory but had difficulty with the lowercase alphabet. According to the report, the Student appeared to have average gross motor skills to navigate the school environment. The Student “walks through the hallway, maneuvering [their] body so to not bump into peers.” During PE, the Student “actively and happily participates in the activities, such as floor hockey,” but “at times [the Student] may appear clumsy in [their] gross motor movements; likely due to dyspraxia.”
 - b. When administered the Bruininks-Oseretsky Test of Motor Proficiency (BOT2), the Student’s scores were as follows:
 - i. Fine Motor Control: Standard score of 29, which is in the 2nd percentile. The Student scored in the “well below average” range on the “Precision” subtest and “below average” on the “Integration” subtest.
 - ii. Manual Coordination: Standard score of 29, which is in the 2nd percentile. The Student scored in the “below average” range on the “Manual Dexterity” subtest and “well below average” on the “Upper Limb Coordination” subtest.
 - iii. On the Fine Motor Composite, the Student received standard score of 27, which is in the 1st percentile and in the “well below average” range.
 - c. According to the report, the Sensory Processing Measure (SPM2) is “a questionnaire-based assessment that identifies specific patterns of behavior that would indicate differences in ability to process a variety of sensory input.” The General Education Teacher completed the SPM2 and the results were as follows:
 - i. The Student scored in the “no difference” or “typical” range in the areas of vision, taste & smell, body awareness, and social participation.
 - ii. The Student scored in the “probably difference” or “some problems” range in the areas of hearing, balance & motion, and planning & ideas.
 - iii. The Student scored in the “definite difference” or “definite dysfunction” range in the area of touch.

- d. Based on the results of the evaluation, the Occupational Therapist concluded that, “To access the general education curriculum [the Student] may require occupational therapy services to support [the Student] and staff.”

71. The District completed a physical therapy evaluation of the Student and documented the results in a report dated April 15, 2024 (PT Evaluation). The PT Evaluation included the Pediatric Evaluation of Disability Inventory – Computer Adaptive Test (Pedi-CAT), a file review, clinical observation, teacher input, and parent input. The results of the evaluation included, but were not limited to, the following:

- a. Background Information: The Student has a medical history of Autism, mixed receptive-expressive language disorder, executive function deficit, dyspraxia, ligamentous laxity of multiple sites, ADHD, and apraxia of speech.
- b. The Physical Therapist administered the Mobility Domain of the Pedi-CAT. According to the report, the Mobility Domain “looks at gross motor tasks that are part of daily activities.” When reviewing a student’s scores on the Pedi-CAT, a T-score between 30-70 is “considered within the expected range for a student’s age.” The Pedi-CAT results were “based on a combination of direct student observation, student interview, and parent interview. The Student achieved a scaled score of 65, which is below the 5th percentile and equates to a T-score of 14.
- c. The Physical Therapist conducted a clinical observation of the Student and found the following:
 - i. Ambulation: The Student “ambulates independently within [their] school environment with no mobility aide needed” and “was observed walking up and down the ramp to [their] modular classroom without difficulty.” Additionally, the Student “was observed fully participating in [their] physical education class with peers.”
 - ii. Sitting Balance/Stability: The Student “was observed sitting in a regular classroom chair with good trunk stability.” While the Student “does tend to maintain a slumped sitting posture,” they are “able to sit more erect and maintain this posture for at least one minute.” While the Parent reports that the Student “has a history of falling out of chairs at home,” their “special education teacher has not noticed this occurring in [their] classroom.”
 - iii. Standing/Walking Balance: The Student has good balance with a “feet-together” stance, but “does have a more difficult time coordinating [their] foot placement with more challenging stance positions.” The Student is “unable to properly place [their] feet for tandem walking even with visual models and verbal prompts.” During physical education class, the Student had “two losses of balance” that were “due to [the Student] looking in a different direction . . . and directly tripping over another student”. During these instances, the Student was able to correct their loss of balance and did not fall.

- iv. Transfers: The Student demonstrated independent sit-to stand transfers and was also independent with floor transfers to and from standing.
 - v. Stair Management: The Student was observed to manage four steps leading to their classroom.
 - vi. Coordination: The Student was able to properly perform “alternative step-taps on an outside curb.” While their speed was “slightly reduced,” they were able to perform the task without losing balance.
- d. Based on the results of the evaluation, the Physical Therapist concluded that, “Impairments in [the Student’s] coordination and motor planning do not impede [them] from participating in school activities at this time.” “However, there are times when [the Student] requires increased time to complete motor tasks compared to [their] peers, most notably stair management or navigating a space with many obstacles.” “[The Student] does not require school-based physical therapy services at this time, as [they are] currently able to access [their] school environment and curriculum.”
72. The District completed a speech/language evaluation of the Student and documented the results in a report dated April 15, 2024 (Speech/Language Evaluation). The Speech/Language Evaluation included an assessment of pragmatic language as well as a file review. The results of the evaluation included, but were not limited to, the following:
- a. The Speech Language Pathologist administered the Pragmatics Profile from the Clinical Evaluation of Language Fundamentals. According to the report, the Pragmatics Profile “is intended to identify the presence of verbal and non-verbal pragmatic skills that are important for successful social and academic communication. It is a checklist filled out by parents and/or teachers.” The Pragmatics Profile was completed by two different Educational Assistants and the Student’s scores were as follows:
 - i. Educational Assistant #1: Scaled score of 3, which is in the 1st percentile.
 - ii. Educational Assistant #2: Scaled score of 2, which is below the 1st percentile
 - b. Based on the results of the Pragmatics Profile, the Speech Language Pathologist concluded that “[The Student] clearly presents with significantly impacted pragmatic language skills.”
73. The School Psychologist completed a psychological evaluation of the Student and documented the results in a report dated April 15, 2024 (Psychological Evaluation). The Psychological Evaluation included an assessment of the Student’s cognitive functioning and academic achievement, as well as a student interview, observation, and review of records. The results of the evaluation included, but were not limited to, the following:
- a. Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V)
 - i. Verbal Comprehension: Composite Score 108, 70th percentile, Average

- ii. Visual Spatial: Composite Score 67, 1st percentile, Extremely Low
- iii. Fluid Reasoning: Composite Score 94, 34th percentile, Average
- iv. Working Memory: Composite Score 85, 16th percentile, Low Average
- v. Processing Speed: Composite Score 75, 5th percentile, Very Low
- vi. Full Scale IQ: Composite Score 87, 19th percentile, Low Average
- vii. Nonverbal Index: Composite Score 74, 4th percentile, Very Low
- viii. General Ability Index: Composite Score 94, 34th percentile, Average
- ix. Cognitive Proficiency Index: Composite Score 76, 5th percentile, Very Low

b. Wechsler Individual Achievement Test, Fourth Edition (WIAT-4):

- i. Word Reading: Standard Score 91, 27th percentile, Average
- ii. Reading Comprehension: Standard Score 88, 21st percentile, Low Average
- iii. Sentence Composition*: Standard Score 94, 34th percentile, Average
- iv. Essay Composition*: Standard Score 75, 5th percentile, Very Low
- v. Math Problem Solving: Standard Score 96, 39th percentile, Average
- vi. Numerical Operations: Standard Score 125, 95th percentile, Very High
- vii. *The report notes that the Sentence Composition and Essay Composition subtests were administered in a non-standardized manner because the Student was permitted to type rather than write by hand.

c. Kaufman Test of Educational Achievement, Third Edition (KTEA-3) (selected subtest)

- i. Written Expression: Standard Score 66, 1st percentile, Very Low

d. At the conclusion of the report, the School Psychologist summarized the findings with, “Collectively, [the Student’s] outcomes on the academic testing is indicative of largely average range academic achievement in the reading domain, scattered achievement in the math domain wherein [they] demonstrate[] average range applied math problem solving achievement but very high achievement with completing concrete math problems/operations, and scattered writing achievement wherein [they] demonstrate[] average sentence writing achievement when provided with prompts and the ability to type but very low achievement with essay writing regardless of the opportunity to write by hand or to type.” The School Psychologist also noted that the Student’s “writing difficulties are consistent with characteristics associated with dysgraphia,” and “also likely affected by [their] diagnosis of dyspraxia.”

74. IEP Meetings were convened on April 15, 2024 and April 23, 2024 to review the results of the District’s evaluations of the Student. At these meetings, the IEP team reviewed the OT Evaluation, PT Evaluation, Speech/Language Evaluation, and Psychological Evaluation. The FBA was not reviewed at either of these meetings. Another IEP meeting was scheduled for May 2, 2024 to discuss any potential revisions to the Student’s IEP based on the results of the evaluations.

75. On April 16, 2024, the Parent sent an email to the District regarding a previous request for the Student’s educational records. In the email, the Parent clarified that they were

“requesting raw data tracking for goals, full information from testing that has happened . . . as well as data on when SDI has happened.”

76. On April 17, 2024, the Director responded via email to the Parent’s request for educational records stating, “When the District receives a request for education records, we provide the students [sic] cumulative file and special education file. I will work on getting [the Student’s] cumulative file and special education file sent over to you as soon as possible.” Regarding the Parent’s request for raw data, the Director responded, “The District typically does not maintain raw data as part of the education record of a student because that data is put into, for example, a progress report which the District does maintain to track progress. Any ‘raw data tracking of goals’ is put into the progress reports that you have access to.”
77. In an email to the Director dated April 17, 2024, the Parent expressed confusion about the progress reports for the Student and noted that some of the progress notes only reported on a portion of a particular goal. The Parent also requested more information about the type of OT services that the Student received as it had been reported at the last IEP meeting that the Student was receiving direct OT services while the Parent was under the impression that only consultation services were provided.
78. In an email dated April 17, 2024, the Director emailed the Occupational Therapist and Special Education Teacher seeking assistance in responding to the Parent’s concerns. In response to the Parent’s concerns regarding OT services, the Occupational Therapist provided the following statement, “Occupational therapy (OT) is a related service. Related services can include activities that may or may not take place with the student present. Related services can include activities such as on-going assessment, trial of equipment, direct intervention, regular observation, and development of recommendations for implementing the student’s plan (consultation). This is provided in the least restrictive manner possible to support the student and their progress on academic goals.” The Occupational Therapist attached the source of this statement, a document entitled “Determining Need and Scope of School-Based Occupational Therapy” from Eugene School District 4J.
79. In an interview, when the Complaint Investigator reviewed the definition of related services articulated by the Occupational Therapist in their April 17, 2024 email, the Occupational Therapist explained that related services could be provided directly or through consultation, depending on what the student needs. When asked how a parent was supposed to understand what their student’s services entailed if related services could include such a variety of activities with, or without, the child present, the Occupational Therapist responded, “As a professional, I decide how much they need to be successful.” When asked why the Student’s IEP did not include a separate goal for OT, the Occupational Therapist explained that the Student’s fine motor needs were addressed through their writing goal and that the OT services were designed to support the Student in meeting their academic goals.
80. When asked how the OT services in the Student’s IEP were implemented, the Occupational Therapist described the services as a combination of consulting with school staff and working with the Student to support their academic goals. The Occupational Therapist observed the Student in class, worked with the Student on using their technology in class, and consulted

with the Special Education Teacher, General Education Teacher, Physical Therapist, PE teacher, and the AT Specialist. In addition, the Occupational Therapist's assistant worked directly with the Student every other week for approximately twenty minutes to assist the Student in utilizing technology and work on hand strength and dexterity.

81. The Director expressed agreement with the Occupational Therapist's definition of related services. They explained, "The IEP isn't intended to capture every little detail," and that discussion at an IEP meeting will help parents understand what a related service is and how it will be implemented. The Director shared that, "We don't necessarily spell out the exact minutes," and that it is up to the provider's professional judgement to provide what is necessary and explain that to the parent.
82. On April 18, 2024, the Director emailed the Parent a copy of a Consent to Evaluate proposing a "screening" of the Student for a possible Cortical Vision Impairment (CVI). The Parent signed consent to the evaluation and returned it to the District on April 19, 2024. The screening was completed by a specialist from the Lane Education Service District (ESD Specialist). According to an email from the ESD Specialist to the Director, dated May 2, 2024, "the screening came out positive for the possibility of cortical visual impairment." The ESD Specialist shared that they "wrote a letter that included some information about CVI for [the Parent] to look at and take to an eye doctor." The email went on to state, "If the eye doctor does give the diagnosis, we would then start the referral process." Neither the Parent nor the District provided any additional documentation to the Complaint Investigator regarding the results of this evaluation or whether it had been reviewed at an IEP meeting.
83. On April 30, 2024, the Special Education Teacher sent the Parent an email stating, "After talking to you on Friday and understanding that you would like a bit more detail on [the Student's] progress, I have attached a more detailed progress note." Attached to the email is a document with detailed information regarding results of curricular assessments and additional information regarding the Student's progress on their IEP goals. When asked about the attached document during an interview, the Special Education Teacher shared that it is their practice to provide this type of document to families at every IEP meeting. The Special Education Teacher clarified that the dates on the attachment sent to the Parent were incorrect and that the data on the document is from the 2023-24 school year (not 2021-22 as written).
84. An IEP Amendment Meeting was convened for the Student on May 2, 2024 (May 2024 Amendment). The purpose of this IEP meeting was to determine if any revisions to the Student's IEP were required based on the results of the District's recent evaluations. The meeting was facilitated by the ODE Facilitator and was recorded. The following revisions were made to the IEP:
 - a. The present levels of academic achievement and functional performance were updated to include recent assessment results and revised statements regarding the educational impact of the Student's disability;

- b. Two goals in the area of language arts were removed as they were either met, or were no longer identified areas of need;
 - c. Goals in language arts and math were revised to better address the Student's areas of need;
 - d. Reading SDI was removed as this was no longer an identified area of need for the Student;
 - e. The location of both Written Language and Social Skills SDI was changed to both the general education and special education settings;
 - f. Accommodations were revised to include the use of a white board as an alternative writing tool;
 - g. Consultation for school personnel by the Speech Language Pathologist and Physical Therapist was added;
 - h. The statement of Non-Participation Justification was updated to reflect the amount of the time that the Student would be removed from the general education environment.
85. According to the Meeting Minutes from the May 2024 Amendment, the Parent requested that a goal be added to the IEP in the area of OT, and that the IEP specify that the Student would receive direct OT services. The Occupational Therapist shared that they did not believe that any changes to current OT services were warranted and the services on the IEP remained the same. The Special Education Teacher described current OT services as, "They are working on taking pictures of assignments and how to electronically fill it in."
86. During a discussion of the Student's accommodations, the Parent asked about using a tool called "MOD math" to "notate math" as the Parent "wants [the Student] to have the opportunity to never have to write by hand." The School Psychologist responded that completing math problems was not identified as a concern in the recent assessments. Multiple District staff shared that the Student was able to write in limited quantities and did not complain that this caused pain at school. The Special Education Teacher noted that the Student has access to a scribe when needed for writing.
87. As reflected in the Meeting Minutes, the IEP team discussed the results of the recent academic assessment and whether the Student continued to require a goal in reading. When asked about the Student's reading comprehension in class, the General Education Teacher shared that this was "not a lagging skill from other 5th graders." The Special Education Teacher recommended removing the Language Arts goals that address reading. The IEP team also discussed whether the Student continued to require a goal in math. The School Psychologist shared their opinion that the Student's math needs could be addressed through accommodations only. At the Parent's request, the IEP team agreed to continue the goal in math, and the accompanying SDI, while additional data was gathered regarding the Student's progress.

88. The District provided the Parent with a PWN, dated May 2, 2024, detailing the decisions made at the May 2024 Amendment. The PWN also responded to requests made by the Parent for the use of ModMath, continuing goals and SDI in reading, and including goals specific to OT services. According to the PWN, the District denied each of these requests based on the following:
- a. ModMath: “Specific programs are not included in the IEP unless it has been demonstrated that this is the only program that will meet the need. Alternate methods to demonstrate [their] knowledge, alternate writing tools, use of a scribe and/or typing, available speech to text and technology devices are accommodations in [their] IEP to address this concern.”
 - b. Reading: “The team was in consensus that [the Student] met the goals and is performing at grade level. The IEP Team agreed that accommodations are sufficient to provide meaningful access to [their] education.”
 - c. OT Goals: “The IEP team agrees related service meets [the Student’s] needs”. In addition, “the Team discussed and clarified that OT Related Services includes direct, indirect and consultation time. [The Student] is receiving direct services from the OT as part of the Related Services.”
89. On May 9, 2024, the Parent sent an email to the Director and other staff requesting that the District conduct “academic testing that shows where [the Student] is relative to [their] grade level.” Several emails followed between the Parent, District staff, and the ODE Facilitator attempting to clarify the information the Parent was seeking. On May 14, 2024, the Parent sent another email inquiring as to the status of “testing to show grade level equivalency,” and also requesting copies of all data collected and service logs documenting the provision of the Student’s SDI.
90. On May 13, 2024, the Parent sent an email to the District with a list of what they believed to be inaccuracies in the May 2, 2024 PWN and requests for clarification. The Director emailed the Parent on May 17, 2024 with a response to each of the Parent’s concerns and indicating that portions of the PWN would be revised.
91. The District provided the Parent with a PWN, dated May 17, 2024, responding to the Parent’s recent requests. As reflected in the PWN, the District denied the Parent’s requests for “(1) grade level equivalency testing, (2) SDI service logs, and (3) additional data requested.” The PWN notes that, “The District has made multiple efforts during phone calls and emails with Parent, to understand what is being requested that has not already been provided,” and “The District has provided all the data that exists, in multiple formats and with explanations. No additional information exists. The grade level equivalency testing described by Parent does not exist.” The PWN also reflects the District’s offer to schedule a meeting with the Parent “to further clarify Parents’ requests.”
92. A meeting took place on May 20, 2024 with the Parent, Director, Special Education Teacher, and ODE Facilitator. This was not an IEP meeting but was intended to address the Parent’s requests for data and SDI service logs. During the meeting, the Parent expressed that they do

not have the information they need to determine if the Student is making progress and does not have evidence that SDI has been implemented. The Parent also shared their belief that the Student's goals were not adequately monitored. The Special Education Teacher provided explanation and additional detail regarding the Student's progress reports, assessment data, and report cards.

93. On or about June 2024, the District generated a Report Card for the Student, which reported on the Student's progress in the general education curriculum for the 2023-24 school year. On all the standards that were assessed in Math, the Student received scores of 4, indicating that they demonstrated mastery that exceeded the end-of-year grade level learning standards. On the standards that were assessed in Language Arts, the Student achieved scores of 3, demonstrating satisfactory mastery of grade level learning standards, with the exception of two writing and two reading standards where the Student received scores of 2, meaning that they had partially or inconsistently mastered grade level learning standards.
94. On June 14, 2024, the District completed a Progress Report regarding the goals and objectives from the November 1, 2023 IEP, which was provided to the Parent. According to the Progress Report, the Student made the following progress:
- a. Social Skills: "[The Student] is really doing great working on tasks independently. [They are] able to initiate routine tasks independently without prompting in the resource room 90% of the time. In [their] general education classroom [they are] able to initiate preferred routine tasks 90% of the time independently and non-preferred routine tasks 70% of the time."
 - b. Math: "[The Student] participates in the general education math program. During [their] SDI, [they are] in a small group working on grade level word problems. As of June 2024, when presented with a single step word problem, [the Student] is able to choose correct function 78% of the time. When given a multi step [sic] word problem, [the Student] is able to choose both the correct functions 50% of the time. [The Student] enjoys and is able to engage with peers and work in partners. Services were delivered consistently on a weekly basis. It is expected that [the Student] will achieve [their] annual goal."
 - c. Language Arts: "[The Student] participates in a structured writing program. This program supports [their] writing skills, which includes combining 3 simple sentences into 1 good strong independent sentence. As of June 2024, when given a graphic organizer and teacher guidance, [the Student] was able to write a 1 paragraph biography about Louis Armstrong. [Their] paragraph consisted of 11 sentences. [Their] writing starts out strong while doing the graphic organizer, but [they] need[] support to understand where to break the paragraphs. [The Student] has a great vocabulary and is eager to finish [their] writing. [The are] continuing to use spell and grammar check or [sic] correct [their] spelling and grammar mistakes. Services were delivered consistently on a weekly basis. It is expected that [the Student] will achieve [their] annual goal."
 - d. Social Skills: "[The Student] is getting better and better about asking for help. [They] still struggle[] with appropriate timing, but [are] able to ask 60% of the time. [The Student]

continues to interrupt a conversation to ask [their] question, but is able to stop and wait when prompted.”

- e. Social Skills: “[The Student] has done pretty well filling [their] point card this last part of the year (90% of the time). [The Student] often comes in and gets it closer to the end of the day and fills out the first part of the day. [They] say that [they] can remember how [they] felt. [They are] great during check out being able to tell me how [their] day was.”
- f. Speech and Language: “[The Student] is able to identify what an inference is and able to make inferences in a variety of scenarios given videos, pictures, and stories. [They are] able to identify 3 inferences. We are working on making more complex inferences with emotions. [The Student] requires min [sic] verbal cues to use [their] visuals when making an inference about a picture.”
- g. Speech and Language: “Currently, [the Student] is able to read a short passage and recall 2 characters, the setting, and 3 main ideas with 80% accuracy. [They are] able to use appropriate transition words such as (first, second, then, finally, etc.) with 80% acc. [sic]”
- h. Speech Therapy: “[The Student] has made really great progress with this goal. When given a scenario or visual/video [the Student] is able to state and identify the best possible solution and how to advocate for [themselves] with 70% acc. [sic]”

95. When asked to describe the progress the Student made during the 2023-24 school year, the Special Education Teacher stated, “I saw growth all over the board.” They described progress in the Student’s social skills, noting that the Student had friends that they played with at recess, as well as in all areas of academics. The General Education Teacher reported similar growth, noting that the Student did well socially, was able to advocate for their needs, and their classroom skills improved throughout the year. The General Education Teacher also observed progress in all areas of academics and believed that the Student received the special education supports and services that they needed to access the curriculum in the general education classroom.

96. On August 5, 2024 the Parents filed this Complaint.

IV. DISCUSSION

Evaluation and Reevaluation Procedures

The Parent alleged that the District violated the IDEA by a) failing to timely convene an evaluation planning meeting to determine if the Student required evaluations in additional areas of suspected disability, b) failing to assess the Student in all areas of suspected disability, and c) failing to timely complete an agreed-upon special education evaluation of the Student and review the results at an IEP meeting.

Before conducting any evaluation or reevaluation of a child, a district must conduct evaluation planning.⁵ As part of evaluation planning, the district must review existing evaluation data on the child.⁶ On the basis of that review, and input from the child's parents, the school district must identify what additional data, if any, is needed to determine (1) whether the child is a child with a disability; (2) the present levels of academic achievement and related developmental needs of the child; (3) whether the child continues to need special education and related services; and (4) whether the child needs any additions or modifications to special education and related services.⁷ A district must ensure that the evaluation is sufficiently comprehensive to identify all the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.⁸

Before evaluating a student, school districts must provide notice to the student's parents that describes the evaluation procedures that the school district proposes to conduct as a result of the evaluation planning, and obtain informed written consent for the evaluation from the student's parents.⁹ Once consent is received, a reevaluation of a student must be completed within sixty (60) school days from written parent consent to the date of the IEP meeting to consider the results of the reevaluation.¹⁰

Neither the IDEA nor Oregon law specify when an evaluation planning meeting must be held following a request from a parent, or when a consent to evaluate must be provided following evaluation planning. Nevertheless, a delay in conducting an evaluation may result in a denial of FAPE if it deprived the Student of an educational benefit or infringed on a parent's opportunity to participate in the IEP process.¹¹

Evaluation Timelines

In this case, the Parent requested an FBA on or about October 7, 2023. The Student began attending school in the District on October 10, 2023 and on October 26, 2023, ten school days later, the District provided the Parent with a Consent to Evaluate for the FBA. The Parent returned the signed Consent to Evaluate to the District on the same date. While the report for the FBA is dated February 8, 2024, the evaluation was not reviewed with the Parent until February 27, 2024, which was more than sixty (60) school days from the date that the Parent consented to the evaluation. Further, while the FBA was reviewed in an informal meeting with the Behavior Consultant, Special Education Teacher, and the Parent, none of the evidence provided by the District demonstrates that the FBA was ever reviewed at an IEP meeting, as is required.

The Parent requested evaluations of the Student in the areas of Speech and Language, OT, PT, and SLD on October 24, 2023. The Parent added a request for an AT evaluation on October 26,

⁵ OAR 581-015-2110(1); 34 CFR §300.305

⁶ OAR 581-015-2115(1)(a); 34 CFR §300.305(a)(1)

⁷ OAR 581-015-2115(1)(b); 34 CFR §300.305(a)(2)

⁸ OAR 581-015-2110(4); 34 CFR §300.304

⁹ OAR 581-015-2110(1) and (2)(a)-(b)

¹⁰ OAR 581-015-2110(5)(b)

¹¹ *D.O. v. Escondido Union Sch. Dist.*, 59 F.4th 394 (9th Cir. 2023)

2023. Although an evaluation planning meeting wasn't held until November 29, 2023, the District made diligent efforts to identify a mutually agreeable date for the meeting, while also prioritizing the development of a new IEP for the Student. In light of these circumstances, an evaluation planning meeting was convened within a reasonable amount of time.

While the evaluation planning meeting was convened on November 29, 2023, a consent to evaluate was not provided to the Parent until January 29, 2024. The District's argument that this delay was justified while it awaited a copy of an evaluation report from the CDRC is unpersuasive. Despite a different recollection by some District staff, a review of the video recording of the evaluation planning meeting demonstrates that the Parent's reference to possible recent testing by the CDRC only pertained to OT, and not any of the other areas proposed for evaluation. Even if the District had reason to delay proposing an OT assessment, it should have moved forward with seeking consent for the other evaluations. Further, on December 5, 2023, the Parent provided an email from the CDRC occupational therapist confirming that the Student had not been evaluated by the CDRC in nearly two years. After receiving this information, the District continued to maintain that it required a copy of an evaluation report from the CDRC before it could provide a consent to evaluate to the Parent.

The Department substantiates this portion of the allegation.

Evaluating in All Areas of Suspected Disability

In their Complaint, the Parent raised issues specific to the District's decision not to complete an AT evaluation and the alleged failure of the District to include social language or speech as areas to be assessed in the January 26, 2024 Consent to Evaluate. When the Parent requested a Speech and Language evaluation, they specifically requested that the assessment focus on pragmatic language, social language, and "other appropriate areas." During the evaluation planning meeting, the Speech Language Pathologist proposed conducting a test of pragmatic language. The January 26, 2024 Consent to Evaluate includes the "Social Pragmatics" section of the CELF-5 and a Functional Communication Assessment and both of these assessments were included in the Speech/Language Evaluation completed by the District. On its website, the American Speech-Language-Hearing Association (ASHA) defines pragmatic language as "an area of social communication that focuses on goal-consistent language use in social contexts . . . It is the set of rules that individuals follow when using language in conversation and other social settings." By definition, the social pragmatics evaluation completed by the District was an evaluation of the Student's social language skills. The Parent provided no information regarding what additional "social language" assessment should have been completed, or what other areas of speech the District should have assessed.

The Parent's request for an AT evaluation was discussed at length during the evaluation planning meeting. In their request, the Parent was clear that they were not requesting an evaluation for eligibility purposes, but to determine the supports that the Student required to access their education. During the evaluation planning meeting, the District and the AT Specialist explained that the Student's AT needs could be addressed through both the OT evaluation and the OT services that were already in the Student's IEP. The Parent shared that

they agreed with that approach during the evaluation planning meeting, although they subsequently disagreed. There was no indication in the evidence that a separate assessment was necessary to identify the Student's AT needs.

The Department does not substantiate this portion of the allegation.

Content of IEP

- The Parent alleged that the District violated the IDEA when it failed to include information in the Student's IEP that is necessary to address the Student's unique educational needs, including, a) accurate and current present levels of performance, b) sufficient information regarding the impact of the Student's disability on their education, c) goals that are specific, measurable, and include baseline data, d) accommodations necessary for the Student to access their education, and e) appropriate related services that included direct OT services.¹²

When developing a student's IEP, the IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum. It must also include measurable annual goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum and meet each of the student's other educational needs that result from the student's disability. To be considered measurable, goals must at least be written in measurable terms (*i.e.*, are observable, include conditions, a target skill/behavior and criteria).

Additionally, the IEP must include information on how the student's progress toward meeting the annual goals will be measured and provided to the parents. Finally, each IEP must include a statement of the specific special education and related services and supplementary aids and services to be provided to the student, or on behalf of the student.¹³

Parents are entitled to a "formal written offer" of the special education placement offered to their student.¹⁴ This requirement for a "formal written offer" has been applied to special education services, as well as placement. Courts have invalidated IEPs that "were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing."¹⁵ Appendix A of the IDEA regulations states that "the amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other team members."¹⁶

The specific special education, related services, and supports to be provided must enable the student to: 1) advance appropriately toward attaining their annual goals, 2) be involved and

Priority Area 2: IEP Development, Oregon's System of General Supervision; 34 CFR § 300.320(a)(2); OAR 581-015-2015

¹³ OAR 581-015-2205(1); 34 CFR §300.320

¹⁴ *Union v. Smith*, 15 F.3d 1519 (9th Cir. 1994)

¹⁵ *S.H. v. Mt. Diablo Unif. Sch. Dist.*, 263 F.Supp.3d 746 (N.D. Cal. 2017)

¹⁶ *Bend-Lapine Sch. Dist. v. K.H.*, 43 IDELR 191 (D. Or. 2005)

make progress in the general education curriculum, and 3) be educated and participate with other students with and without disabilities.¹⁷ The IDEA “requires an education program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹⁸ In considering this standard, “Advancement from grade to grade is appropriately ambitious for most children in the regular classroom.”¹⁹

Present Levels

When the Student enrolled in the District, the Student’s most recent IEP had been developed over a year prior. The District was tasked with developing a new annual IEP for the Student after only thirteen days of attendance. The District made reasonable efforts to collect current and accurate information for the present levels section of the IEP by reviewing the Student’s previous IEP, consulting with the Parent and the Student’s previous teacher, and administering the EasyCBM. While District staff acknowledged that the present level information was not as detailed as they would have liked, it provided a comprehensive description of the Student’s current level of functioning based on the information that was available at the time. The District made significant updates to the present levels in the Student’s May 2, 2024 IEP Amendment based on the results of its evaluations, and those present levels also provide a comprehensive description of the Student’s current level of functioning.

The Department does not substantiate this portion of the allegation.

Disability Impact Statement

Each of the Student’s IEPs developed during the time period of the Complaint contained a statement regarding how the Student’s disability affects their involvement and progress in the general education curriculum. This is commonly referred to as the “disability impact statement.” In their Complaint, the Parent alleges that the disability impact statement is insufficient because it doesn’t provide information as to why SDI is needed, doesn’t list OT services, and does not list each of the Student’s medical diagnoses. As stated in the District’s *Response*, neither the IDEA nor Oregon law provide for the level of detail that is required in a disability impact statement. The Parent does not cite to any legal requirement that the District include the items referenced in the Complaint in the disability impact statement.

The Department does not substantiate this portion of the allegation.

Goals

The Student’s November 1, 2023 IEP contains annual goals that address each of the Student’s disability-related needs as known at the time of that IEP meeting. Those goals were updated in both the January 29, 2024 and May 2, 2024 IEP Amendments as the IEP team acquired additional information regarding the Student’s needs. Each of these goals is specific, includes

¹⁷ OAR 581-2200(1)(d); 34 CFR §300.320(a)(4)

¹⁸ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 1001 (2017)

¹⁹ *Id.* at 1000

measurable criteria, and is related to baseline information in the present levels, to the extent that information was available. However, the goals included in the IEP for social skills were not written in measurable terms.

The Department substantiates this portion of the allegation as it relates to the social skills goals.

Present Levels

The present levels of an IEP are intended to be a snapshot of a student's performance at the time of their annual IEP. While the baseline information in the present levels is not as closely aligned to the goals as the Parent would like, the Parent has not articulated a legal requirement for the level of detail that they are requesting. The Parent particularly takes issue with the fact that updated baseline data for the goals was not added to the present levels of the November 20, 2024 or January 29, 2024 IEP Amendments. The Parent argues that, without more detailed baseline data, the Parent is unable to determine if the Student has made growth on their goals.

A school district is not required to update the baseline data each time a student acquires new skills. That is the purpose of progress reports, to provide updated data on a student's performance as the year progresses. The District provided the Parent with progress notes on November 30, 2023, just four weeks after development of the Student's annual IEP, with clear and detailed data regarding the Student's performance on each of their goals. These documents provide sufficient information for the Parent to understand how the Student was progressing on their goals.

The Department does not substantiate this portion of the allegation.

Accommodations

The Parent alleged that the District failed to include "accommodations for picture visuals" in the Student's IEP that the Student requires to access their education. It is unclear what specific accommodation the Parent believes should have been included. Further, no evidence was provided to demonstrate that the Student required additional accommodations to access their education.

The Department does not substantiate this portion of the allegation.

Occupational Therapy Services

In their Complaint, the Parent raised issues regarding the District's alleged failure to provide the Student with appropriate OT goals and services. The provision of OT services to the Student was a point of contention between the Parent and the District throughout the period of the Complaint.

The Student's September 2022 IEP, from their previous district, included two goals related to OT which were not included in the November 1, 2023 IEP. One of the goals addressed writing and the other related to improving core strength. As explained by District staff, the Student's

writing needs were addressed through the Language Arts goals, so an OT goal in that area was not necessary. While the Student may have had poor core strength, there was no evidence that this was an area of need that impacted the Student's ability to be involved in and make progress in the general education curriculum.

While the IEP team determined that the Student did not require goals specifically designated as "OT goals", the IEP team did agree that the Student requires occupational therapy as a related service to benefit from their special education. OT as a related service is documented in each of the Student's IEPs as "Occupational Therapy" for 480 minutes per year. The Parent repeatedly sought clarity regarding what the offered OT services entailed. The District's response that related services can be a combination of direct services, indirect services, and consultation at the discretion of the therapist does not adequately explain what services the Student will actually receive. Whether the failure to adequately describe the OT services resulted in a denial of FAPE to the Student will be addressed later in this order.

The Department substantiates this portion of the allegation.

When IEPs Must Be in Effect

The Parent alleged that the District violated the IDEA by not providing special education and related services, specifically OT services and Math SDI; not implementing accommodations in accordance with the Student's IEP; and failing to provide the Parent with progress reports that adequately explained the Student's progress toward their annual IEP goals.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.²⁰ The school district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP.²¹ "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."²²

Special education is defined as "specially designed instruction," that is provided at no cost to the parents and is intended to meet the unique needs of a child with a disability. "Specially Designed Instruction" means adapting, as appropriate to the needs of a child with a disability, the content, methodology, or delivery of instruction to: 1) address the child's unique needs resulting from the disability; and 2) ensure the child's access to the general education curriculum.²³

"Related services" includes transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes orientation and mobility services, speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational

²⁰ OAR 581-015-2220(1)(a); 34 CFR §300.323(c)

²¹ OAR 581-015-2220; 34 CFR §300.323

²² Questions and Answers on *U.S. Supreme Court Decision Endrew F. v. Douglas County Sch. Dist. Re-1*, 71 IDELR 68 (EDU 2017)

²³ OAR 581-015-2000(37); 34 CFR §300.39(b)(3)

therapy, recreation including therapeutic recreation, school health services and school nurse services, counseling services including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services for diagnostic or evaluation purposes.²⁴

When a student with an active IEP transfers to a new school district in the same state within the same school year, the new school district must provide a FAPE to the student, that includes services comparable to those described in the IEP from the previous district, until the new district either: (a) adopts the student's IEP from the previous school district; or (b) develops, adopts, and implements a new IEP for the student.²⁵

A district violates the IDEA when it materially fails to implement an IEP.²⁶ "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP."²⁷

Each of the Student's IEPs during the time period of the Complaint includes Math SDI. The Parent's allegation that the Math SDI was not implemented was specific to SDI that was to be provided in the general education setting. Although the District did not maintain service logs, the Special Education Teacher credibly described when Math SDI was provided and by whom. They described in great detail how materials for the Student's Math SDI were prepared, how direction was provided to the IA and general education teachers in the provision of SDI, and how they monitored the provision of Math SDI. Further, the District provided detailed progress reports to support its position that SDI was implemented consistently in accordance with the IEP.

The Parent alleged that the District failed to provide the OT services in the Student's September 2022 IEP from the date they enrolled in the District until the IEP team developed a new IEP for the Student on November 1, 2023. The September 2022 IEP includes OT as a related service for 80 minutes per month. The Occupational Therapist acknowledged that they had not provided services to the Student prior to the meeting on November 1, 2023 when a new IEP was developed for the Student. The Student's September 2022 IEP was only in effect for the thirteen school days before a new IEP was developed. Given that the frequency of OT services in the September 2022 IEP were written on a monthly basis, and the September 2022 IEP was in effect for less than a month, it cannot be established that the District failed to implement the OT services as required by the September 2022 IEP.

Regarding implementation of the Student's accommodations, the General Education Teacher and Special Education teacher described in detail how the Student's accommodations were implemented. Other staff, including the Behavior Consultant and Occupational Therapist reported observing that the Student's accommodations, particularly those related to writing and the use of assistive technology, were implemented in accordance with the Student's IEPs.

²⁴ OAR 581-015-2000(29); 34 CFR §300.34

²⁵ OAR 581-015-2230(1)(a)-(b); 34 CFR §300.323(e)

²⁶ *Van Dуйn v. Baker Sch. Dist.*, 502 F3d 811, 822 (9th Cir. 2007)

²⁷ *Id.*

The Parent did not provide evidence to support the allegation that the Student's accommodations were not implemented.

The District provided progress reports, for each of the Student's goals, at the frequency required by the Student's IEPs. The progress reports provided sufficient information to understand the progress that the Student made throughout the year. When the Parent requested more detail regarding the Student's progress, the Special Education Teacher promptly provided them with additional information.

The Department does not substantiate this allegation.

Review and Revision of IEPs

The Parent alleged that the District violated the IDEA by not reviewing and revising the Student's IEP, as appropriate, to address current assessment results and other new information related to the Student's disability.

The IDEA requires school districts to ensure that IEP teams review every IEP at least once per year to: (a) determine whether a student with a disability is achieving their IEP goals, and (b) to revise the IEP as appropriate.²⁸ The requirement for the IEP team to review and revise an IEP is not limited to once per year. The IEP team must review and revise a student's IEP at any time to address:

1. A lack of expected progress toward the annual goals and in the general education curriculum;
2. The results of any reevaluation;
3. Information about the student provided to, or by, the student's parents;
4. The student's anticipated needs; or
5. Other matters.²⁹

From the time that the Student enrolled in the District in October 2023, until the end of the 2023-24 school year, the Student's IEP team met seven times. After developing the Student's annual IEP on November 1, 2023, the IEP team met on November 21, 2023 and January 29, 2024 to review and revise the IEP based on updated information about the Student's needs. Revisions were made to the Student's IEP at each of these meetings. After conducting comprehensive evaluations of the Student, which were reviewed over two separate meetings in April 2024, the IEP team met again on May 2, 2024 at which time significant revisions were made to the Student's IEP to reflect the new assessment results.

The Department does not substantiate this allegation.

Education Records

²⁸ OAR 581-015-2225(1); 34 CFR §300.324(b)

²⁹ OAR 581-015-2225(1)(b)(A)-(E)

The Parent alleged that the District violated the IDEA by denying the Parent's access to the Student's education records, specifically service logs or other records demonstrating when special education services were provided to the Student.

The IDEA incorporates by reference the requirements of the Family Educational Rights and Privacy Act (FERPA).³⁰ These provisions provide that a school district must comply with parental requests to inspect and review their child's education records without unnecessary delay.³¹ In Oregon, this means that education records requested by a parent must be provided before any meeting regarding an IEP, and in no case more than ten business days after the request has been made.³² AS OAR 581-015-2205 adopts the provisions of FERPA, "education records" are defined as those records that are (1) directly related to a student; and (2) maintained by an educational agency. This does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.³³ The term "maintain" has been interpreted as covering records that are "kept in a filing cabinet in a records room at the school or on a permanent secure database."³⁴

When the Parent requested the Student's education records, the District provided them with a copy of the Student's special education and general education cumulative file. When the Parent requested copies of service logs, the District responded that it does not maintain service logs for the provision of special education services. The District is not required to keep service logs or any other records demonstrating that special education services were provided. The Parent provided no evidence that the District failed to provide them with any of the Student's education records in existence at the time of their request.

The Department does not substantiate this allegation.

Prior Written Notice

The Parent alleged that the District violated the IDEA by not providing accurate PWN to the Parent regarding the outcome of IEP meetings and not providing PWN prior to amending the Student's IEP goals.

The IDEA requires school districts to give parents PWN whenever it proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability.³⁵ PWN must be both specific and explanatory, including:

- a. A description of the action the school proposed or refused;
- b. An explanation of why the school proposes or refuses to take the action;

³⁰ OAR 581-015-2300; 34 CFR §300.501(a); 34 CFR §§99.1 to 99.38

³¹ OAR 581-015-2300(2); 34 CFR §300.501(a)

³² OAR 581-015-2300(3)(a)

³³ OAR 581-015-2300(1); 34 CFR §99.3

³⁴ *Owasso Indep. Sch. Dist. No. 1-011 v. Falvo*, 536 U.S. 426 (2002)

³⁵ OAR 581-015-2310; 34 CFR §300.503(a).

- c. A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
- d. A statement that the parents of a child with a disability have procedural safeguards under IDEA and how parents can obtain a copy of the procedural safeguards notice;
- e. Sources for parents to contact to obtain assistance in understanding the IDEA;
- f. A description of other options considered and the reasons why those options were rejected; and
- g. A description of other factors that are relevant to the school's proposal or refusal.

The purpose of such detailed PWN requirements is two-fold. First, it assists school personnel to consider options carefully and to make decisions on the basis of articulable criteria or reasoning. Second, it gives parents definitive statements of school district decisions and enables their understanding of exactly what considerations led to those decisions.

The District provided the Parent with PWNs after each IEP meeting, and in response to additional requests made by the Parent throughout the year. Each of the PWNs provide a significant amount of detail regarding the outcome of the Student's IEP meetings and, apart from the District's description of the Student's OT services, the Parent appeared to understand the content of the PWNs. While there were occasional errors in some of the PWNs, the District promptly corrected them when pointed out by the Parent and these errors did not appear to impede the Parent's understanding of the decisions made by the District. The Parent provided no evidence that the District amended the Student's IEP goals without providing a PWN reflecting those changes.

While the PWNs developed by the District generally satisfy federal and state statutory requirements, the PWNs that describe the District's offer of OT services to the Student fail to meet those standards. It is undisputed that the OT services reflected in the Student's September 2022 IEP were provided to the Student as a direct service by the Student's previous district. When the IEP team met on November 1, 2023 to develop a new IEP for the Student, the IEP included 480 minutes per year of OT services. The November 1, 2023 PWN, written to reflect decisions made at the IEP meeting, states "OT decreased from 80 min/month to 480 min/year." The PWN does not indicate that the OT services were changed from direct services to a combination of direct, indirect, and consultation services. When the Parent requested that the District document the service change in a PWN, the District included a statement in the November 21, 2023 PWN that, "The previous PWN should state that OT was changed to related service from direct service to consultation." This statement does not adequately describe the OT services that were offered to the Student.

The Department substantiates this allegation as it relates to the description of the OT services offered to the Student.

Parent Participation

The Parent alleged that the District violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IEP and educational

placement of the Student, and the provision of a free appropriate public education to the Student. Specifically, the District predetermined decisions regarding the content of the Student's IEP, did not consider information about the Student provided by the Parent, failed to allow the Parent to audio-record IEP meetings, did not allow the Parent to communicate with staff responsible for implementing the Student's IEP, and failed to provide notices to the Parent using the Parent's preferred mode of communication.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.³⁶ School districts must consider the concerns of the parents for enhancing the education of their child, among other indicators of the student's academic, developmental, and functional needs.³⁷ "[P]arents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs."³⁸ School districts must also ensure that parents understand the proceedings of an IEP meeting, including providing an interpreter for parents whose native language is other than English.³⁹ A meeting, in which parents must be given the opportunity to participate, does not include "preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting."⁴⁰

As stated in the sections above, parents are entitled to an IEP that is sufficiently "clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing." Failure to provide a parent with information regarding the character of their student's special education services can impede their ability to participate in decisions regarding those services.⁴¹ The District failed to adequately explain to the Parent what the Student's OT services will entail, including whether they will be provided as a service to the Student, as consultation to school personnel, or in some other manner. Without this information, the Parent was unable to participate in decisions regarding the services that would be provided to meet the Student's needs.

With the exception of decisions made by the IEP team regarding OT services, the Parent was provided the opportunity to participate in each meeting regarding the Student's identification, evaluation, IEP, and educational placement during the complaint period. The Parent had ample opportunity to ask questions and provide input at each these meetings and took advantage of those opportunities. The District listened to the Parent's concerns, noted them in meeting minutes, and conducted evaluations of the Student at the Parent's request. The District followed IEP meetings with a multitude of emails and phone calls to address any concerns raised by the Parent. Further, six of the seven IEP meetings held during the 2023-24 school year were facilitated by the ODE Facilitator, further supporting the Parent's ability to participate in decisions regarding the Student's educational program.

³⁶ OAR 581-015-2190(1); 34 CFR §300.501(b)

³⁷ OAR 581-015-2205(1)(b) and (d); 34 CFR §300.324(a)(1)

³⁸ Letter to Northrop (OSEP 5/21/13), citing 71 Fed. Reg. 46,678 (2006)

³⁹ OAR 581-015-2190(3); 34 CFR §300.322(e)

⁴⁰ OAR 581-015-2190(4); 34 CFR §300.501(b)(3)

⁴¹ *S.H. v. Mt. Diablo Unif. Sch. Dist.*, 263 F.Supp.3d 746 (N.D. Cal. 2017)

Regarding the Parent's request to audio record meetings, the only meeting that the Parent was not permitted to record was the November 1, 2023 IEP meeting. The District provided the Parent with extremely detailed minutes reflecting discussions at the meeting but, when the Parent indicated that those minutes were not adequate to allow them to meaningfully participate in future IEP meetings, the District permitted them to audio record all future meetings. The meeting minutes from the November 1, 2023 IEP Meeting illustrate a significant level of participation by the Parent and the evidence does not support that the refusal of the District to allow the Parent to record that meeting impeded their ability to be an active participant in the IEP.

The Parent's allegation that the District prevented them from communicating with District staff is unfounded. There is no requirement that a parent be permitted to communicate with every staff member who may interact with a student throughout the day. The evidence does not support that any real or perceived limitations on the ability of the Parent to communicate with IA's impeded their ability to participate in decisions regarding the Student's education.

Similarly, the Parent provided no evidence that their participation was impeded due to the District's failure to provide notices to the Parent electronically, which is their preferred mode of communication. A review of the nearly 5000 pages of emails provided to the Complaint Investigator by the Parent and the District revealed that the District made consistent attempts to provide documents in the format requested by the Parent.

The Department substantiates this allegation in part with respect to the lack of clarity around OT services.

Free Appropriate Public Education

Due to the alleged IDEA violations detailed above, the Parent alleged that the District failed to provide the Student with a FAPE.

Each school district is responsible for providing a FAPE to school age children with disabilities for whom the school district is responsible.⁴² The IDEA defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision and direction, and without charge; 2) Meet the standards of the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP.⁴³

To determine if a student has been denied a FAPE, courts must consider whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.⁴⁴ Not all procedural violations

⁴² OAR 581-015-2040(1); 34 CFR §300.101(a)

⁴³ OAR 581-015-2040; 34 CFR §300.17

⁴⁴ *Andrew F.*, 137 S.Ct. at 999

amount to a denial of FAPE. A school district's procedural violation denies FAPE to a student if it results in a loss of educational opportunity or if it seriously infringes on the parents' opportunity to participate in the development of the IEP.⁴⁵

Failure to Review the FBA at an IEP Meeting

The District committed a procedural violation by failing to review the results of the FBA at an IEP meeting. If the FBA had been reviewed at an IEP meeting, the team would have determined if the results of the FBA warranted the development of a BSP and, if so, a BSP would have been developed for the Student. In this case, the results of the FBA demonstrated that the Student did not require a BSP, or any other behavioral supports that were not already included in the Student's IEP. This conclusion is supported by the opinions of multiple District staff that the Student did not require a BSP as the Student's behavior, given the supports already in their IEP, did not create a barrier to them accessing their education. Accordingly, this procedural violation did not cause the Student to experience a loss of educational benefit or opportunity and did not result in a denial of FAPE.

The Department does not substantiate this portion of the allegation.

Delay in Completing Evaluations

The District unreasonably delayed the completion of the Occupational Therapy, Physical Therapy, Speech and Language, and Psychological Evaluations by waiting two months to provide a Consent to Evaluate to the Parent following the Evaluation Planning Meeting. To determine whether this delay resulted in a denial of FAPE, one must consider whether it resulted in a loss of educational benefit or opportunity to the Student. If the District had provided the Parent with a consent to evaluate at the November 29, 2023 Evaluation Planning Meeting, the evaluations would have been timely completed on or about March 14, 2024. Due to the delay, the Student's IEP team did not meet until May 2, 2024 to determine if the evaluations warranted revisions to the Student's IEP. At this meeting, the only additional services added to the IEP were consultation for school personnel by the Speech Language Pathologist and Physical Therapist. In addition, Reading SDI was removed and the location of SDI for Written Language and Social Skills was changed to both the general education and special education setting. As reflected in the Non-Participation Justification section, these changes resulted in a reduction of the amount of time that the Student was removed from the general education setting. Accordingly, the delay in completing the evaluations and reviewing them at an IEP meeting resulted in both the loss of consultation services and the loss of increased access to the general education setting. This was a loss of educational opportunity for the Student and constitutes a denial of FAPE from approximately March 14, 2024 to May 2, 2024.

The Department substantiates this portion of the allegation.

OT Services

⁴⁵ *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992)

The District failed to describe the offer of OT services in the Student’s IEP with sufficient specificity. Further, the PWNs that the District provided to the Parent do not adequately describe how the Student’s OT services will be implemented. Emails between the Parent and District staff and meeting minutes from the Student’s IEPs demonstrate the Parent continued to lack understanding as to the type of OT services the Student was to receive. The confusion surrounding the provision of OT deprived the Parent of their right to meaningfully participate in IEP process, resulting in a denial of FAPE to the Student.

The Department substantiates this portion of the allegation.

V. CORRECTIVE ACTION

*In the Matter of Junction City School District 69
Case No. 024-054-043*

Based on the facts provided, the following corrective action is ordered:

Action Required	Submissions	Due Date
1. The District will convene an IEP meeting for the Student to determine appropriate compensatory education services for the loss of educational opportunity caused by the failure to adequately describe OT services and the delay in completing the Occupational Therapy, Physical Therapy, Speech and Language, and Psychological Evaluations	A written plan for delivery of compensatory education developed at an IEP meeting with the Parent. Evidence showing that compensatory services were provided.	November 29, 2024 January 31, 2025
2. The District will develop and conduct training for all staff responsible for evaluating students in special education on the District’s responsibility to: <ul style="list-style-type: none"> a. Complete evaluations and review the results at an IEP meeting within sixty (60) school days of receiving parent consent. b. Provide parents with a Consent to Evaluate within a reasonable amount of time after deciding to evaluate a student at an evaluation planning meeting. 	Training agenda/materials to ODE for review/approval. Sign-in sheet from training.	November 29, 2024 January 31, 2025

<p>3. The District will develop and conduct training for all staff responsible for developing IEPs on:</p> <ul style="list-style-type: none"> a. the District’s responsibility to clearly and specifically describe the special education services offered in a student’s IEP. b. IEP content requirements for measurable annual goals. 	<p>Training agenda/materials to ODE for review/approval.</p> <p>Sign-in sheet from training.</p>	<p>November 29, 2024</p> <p>January 31, 2025</p>
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Dated: this 4th Day of October 2024



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: October 4th, 2024

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)